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2       UNITED STATES BANKRUPTCY COURT  
3       SOUTHERN DISTRICT OF NEW YORK  
4       Case No. 05-44481PM  
5       - - - - -  
6       In the Matter of:  
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8       DELPHI CORPORATION, et al.  
9  
10      Debtors.

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1  
2      Hearing re Motion to Authorize Motion for  
3      Order Under 11 U.S.C. Section 1113(c)

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4 Authorizing Rejection of Collective Bargaining  
5 Agreements and Under 11 U.S.C. Section 1114(g)  
6 Authorizing Modification of Retiree Welfare  
7 Benefits  
8  
9 Hearing re Statement/Expert Report of Thomas  
10 A. Kochan in Opposition to Debtors' Motion for  
11 Order Under 11 U.S.C. Section 1113(c)  
12 Authorizing Rejection of Collective Bargaining  
13 Agreements and Under 11 U.S.C. Section 1114(g)  
14 Authorizing Modification of Retiree Welfare  
15 Benefits  
16  
17 Hearing re Motion to Authorize Motion for  
18 Order Under 11 U.S.C. Section 1113(c)  
19 Authorizing Rejection of Collective Bargaining  
20 Agreements and Under 11 U.S.C. Section 1114(g)  
21 Authorizing Modification of Retiree Welfare  
22 Benefits  
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1 Hearing re Motion to Dismiss Party/Limit  
2 Participation in the Hearing on Delphi's  
3 Section 1113 and Section 1114 Motion  
4  
5 Reply to Motion Omnibus Reply of UAW in  
6 Support of Motion to Limit Participation in  
7 the Hearing on Delphi's Section 1113 and  
8 Section 1114 Motion

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10 Notice of Hearing/Proposed 1113/1114 Hearing

11 Agenda

12

13 Hearing re Motion to Authorize Motion for

14 Order Under 11 U.S.C. Section 1113(c)

15 Authorizing Rejection of Collective Bargaining

16 Agreements and Under 11 U.S.C. Section 1114(g)

17 Authorizing Modification of Retiree Welfare

18 Benefits

19

20 Declaration of Kevin M. Butler in Support of

21 Delphi's Motion for Authority to Reject

22 Collective Bargaining Agreements Under 11

23 U.S.C. Section 1113(c) and Modify Retiree

24 Welfare Benefits Under 11 U.S.C. Section

25 1114(g)

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2 Declaration of Randal A. Middleton

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4 Objection to Motion

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6 Declaration of Donald L. Griffin

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21

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25 Transcribed by: Lisa Bar-Leib

5

1

2 APPAREANCES:

3 SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP

4 Attorneys for Debtor and

5 Debtors-in-Possession

6 333 West Wacker Drive

7 Chicago, IL 60606

8

9 BY: JOHN WM. BUTLER, JR., ESQ.

10 JOHN K. LYONS, ESQ.

11 RON E. MEISLER, ESQ.

12

13 SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP

14 Attorneys for Debtor and

15 Debtors-in-Possession

16 Four Times Square

17 New York, NY 10036

18

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19 BY: KAYALYN A. MARAFIOTI, ESQ.

20 THOMAS J. MATZ, ESQ.

21 JAY S. BERKE, ESQ.

22

23

24

25

6

1 O'MELVENY & MYERS, LLP

2 Attorneys for Debtors

3 7 Times Square

4 New York, NY 10036

5

6 BY: JEFFREY I. KOHN, ESQ.

7

8 O'MELVENY & MYERS, LLP

9 Attorneys for Debtors

10 1625 Eye Street

11 Washington, D.C. 20006

12

13 BY: TOM JERMAN, ESQ.

14

15 O'MELVENY & MYERS, LLP

16 Attorneys for Debtors

17 400 South Hope Street

18 Los Angeles, CA 90071

19

20 BY: ROBERT A. SIEGEL, ESQ.

21

22

23

24

25

7

1 COHEN, WEISS AND SIMON, LLP

2 Attorneys for UAW

3 330 West 42nd Street

4 New York, NY 10036

5

6 BY: BABETTE CECCOTTI, ESQ.

7 BRUCE S. LEVINE, ESQ.

8 BRUCE H. SIMON, ESQ.

9 PETER D. DECHIARA, ESQ.

10 DAVID R. HOCK, ESQ.

11

12 LATHAM & WATKINS, LLP

13 Attorneys for Statutory Creditors'

14 Committee

15 885 Third Avenue

16 New York, NY 10022

17

18 BY: ROBERT J. ROSENBERG, ESQ.

19 MITCHELL E. SEIDER, ESQ.

20

21

22

23

24

25

8

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1 LATHAM & WATKINS, LLP  
2 Attorneys for Statutory Creditors'  
3 Committee  
4 633 West Fifth Street  
5 Suite 4000  
6 Los Angeles, CA 90071  
7  
8 BY: JOEL E. KRISCHER, ESQ.  
9  
10 FRIED, FRANK, HARRIS, SHRIVER & JACOBSON, LLP  
11 Attorneys for the Equity Committee  
12 One New York Plaza  
13 New York, NY 10004  
14  
15 BY: BONNIE STEINGART, ESQ.  
16  
17 KIRKPATRICK & LOCKHART NICHOLSON GRAHAM, LLP  
18 Attorneys for Wilmington Trust Company  
19 599 Lexington Avenue  
20 New York, NY 10022  
21  
22 BY: EDWARD M. FOX, ESQ.  
23  
24  
25

9

1 WHITE & CASE, LLP  
2 Attorneys for Appaloosa Management  
3 1155 Avenue of the Americas  
4 New York, NY 10036  
5

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6 BY: THOMAS E. LAURIA, ESQ.

7 GLENN M. KURTZ, ESQ.

8 DOUGLAS P. BAUMSTEIN, ESQ.

9

10 BURR & FORMAN, LLP

11 Attorneys for Mercedes Benz

12 420 North 20th Street

13 Birmingham, AL 35203

14

15 BY: MICHAEL L. HALL, ESQ.

16

17 ORRICK, HERRINGTON & SUTCLIFFE, LLP

18 Attorneys for Ad Hoc Trade Committee

19 666 Fifth Avenue

20 New York, NY 10103

21

22 BY: ALYSSA D. ENGLUND, ESQ.

23

24

25

10

1 KENNEDY, JENNIK & MURRAY, P.C.

2 Attorneys for IUE-CWA

3 113 University Place

4 New York, NY 10003

5

6 BY: THOMAS M. KENNEDY, ESQ.

7 SUSAN M. JENNIK, ESQ.

8

9 MEYER, SUOZZI, ENGLISH & KLEIN, P.C.

10 Attorneys for Steelworkers Union

11           1350 Broadway  
12           Suite 501  
13           New York, NY 10018  
14  
15 BY:     LOWELL PETERSON, ESQ.  
16  
17 PREVIANAT, GOLDBERG, UELMEN, GRATZ, MILLER &  
18 BRUEGGEMAN, S.C.  
19           Attorneys for IBEW and IAM  
20           1555 North River Center Drive  
21           Suite 202  
22           Milwaukee, WI 53212  
23  
24 BY:     MARIANNE GOLDSTEIN ROBBINS, ESQ.  
25

11

1     GORLICK, KRAVITZ & LISTHAUS, P.C.  
2           Attorneys for Operating Engineers  
3           Locals 18-S, 101-S, 832-S  
4           17 State Street  
5           4th Floor  
6           New York, NY 10004  
7  
8 BY:     BARBARA S. MEHLSACK, ESQ.  
9  
10 WEIL, GOTSHAL & MANGES, LLP  
11           Attorneys for General Motors  
12           767 Fifth Avenue  
13           New York, NY 10153  
14  
15 BY:     JEFFREY L. TANENBAUM, ESQ.

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16 MICHAEL P. KESSLER, ESQ.

17

18 UAW/ASSOCIATE GENERAL COUNSEL

19 8000 East Jefferson

20 Detroit, MI 48214

21

22 BY: NIRAJ R. GANATRA, ESQ.

23

24

25

12

1 OFFICE OF THE UNITED STATES TRUSTEE

2 33 Whitehall Street

3 21st Floor

4 New York, NY 10004

5

6 BY: ALICIA M. LEONARD

7

8

9

10

11

12

13

14

15

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1                   P R O C E E D I N G S

2                   THE COURT: Please be seated. All  
3 right. We're back on the record. You're  
4 still under oath, Mr. Butler.

5                   THE WITNESS: Yes, Your Honor.

6                   REDIRECT EXAMINATION BY

7                   MR. BUTLER:

8                   Q. Mr. Butler, during your cross-  
9 examination, you were questioned by counsel  
10 for all the unions about the various proposals  
11 that were submitted by Delphi to the unions.  
12 Do you recall that examination and your  
13 various answers?

14                  A. I do.

15                  Q. How many proposals since the debtors  
16 filed Chapter 11 have they provided to the  
17 United Auto Workers?

18                  A. Three proposals.

19                  Q. I'd ask you to look at Exhibit 77. Is  
20 that the first of the three proposals?

21                  A. It is.

22                  Q. And we're going to flip back and forth  
23 between proposals, so I'd like you to keep  
24 that in your mind. And then the next  
25 proposal, would you look at Exhibit No. 83.

1 Can you just tell me? Is that the second  
2 proposal?

3 A. It is.

4 Q. And Exhibit No. 89, is that the third  
5 proposal?

6 A. Yes.

7 Q. So the proposals are October 21st, 2005,  
8 November 15th, 2005, March 24, 2006, is that  
9 correct?

10 A. That's correct.

11 Q. Now, is it accurate that the November  
12 15th proposal, the Exhibit 83 -- is that  
13 blacklined against Exhibit 77 to show the  
14 differences? Flip through and -- I'll point  
15 you to page 19.

16 A. Yes, it is.

17 Q. And, again, on Exhibit 83, if you go to  
18 page A1 and A2, that's blacklined as well,  
19 correct?

20 A. That's correct.

21 Q. And when you look at Exhibit 89, is that  
22 also blacklined against the prior proposal to  
23 show changes? The prior two proposals to show  
24 changes?

25 A. Yes, it is.

1 Q. So, for example, on the October 21st

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2 proposal, at page 12, in the provision on

3 severance pay --

4 A. I'm sorry, counselor. Can you give me  
5 the exhibit number again?

6 Q. Page 12, Exhibit 77.

7 A. Thank you. Yes.

8 Q. Section on severance pay. In your own  
9 words, will you explain what you meant by that  
10 when you sent that proposal regarding  
11 severance pay to the unions?

12 A. That effectively meant that we would  
13 discuss with the unions a means of separating  
14 or severing employees, affect a type of soft  
15 landing or some other remuneration if their  
16 services were no longer needed.

17 Q. And if you look at 12 of the November  
18 15th proposal, that's a very identical  
19 provision and the identical offer?

20 A. Yes, it is.

21 Q. And on Exhibit 89, page 15, is the  
22 severance pay offer still the same?

23 A. It has been blacklined. It's changed.

24 Q. So, Mr. Butler, when the Court or we or  
25 anyone of us in this room look at Exhibit 89,

16

1 if something hasn't been blacklined, then it  
2 was contained in the original October 21st  
3 proposal, is that correct?

4 A. I believe that's correct.

5 Q. Did United Auto Workers comment publicly  
6 on your October 21st proposal after they

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7 received it?

8 A. I believe they did?

9 Q. Would you look at Exhibit 57, please? So  
10 far as you know, is this the public statement  
11 that they made?

12 A. Yes, I believe it is.

13 Q. It's short. Would you just read the  
14 first and last sentences? Just the first and  
15 last sentences of that statement into the  
16 record?

17 A. "The UAW received Delphi's contract  
18 proposal today." And the last sentence,  
19 "maybe some believe the American dream is  
20 over; UAW rejects that dismal idea and will  
21 continue the struggle to fulfill that dream."

22 Q. Did you take this public statement as a  
23 rejection of your October 21st contract offer?

24 A. I did.

25 Q. Between October 21st and the time you

17

1 made your next offer to the United Auto  
2 Workers -- now we're talking about the  
3 November 15th proposal, Exhibit 83. Now, did  
4 you withdraw the November -- the October 21st  
5 offer at any time between October 21st and  
6 November 15th?

7 A. No, we did not.

8 Q. During that period of time, did the UAW  
9 sit down with and ask you any questions about  
10 the proposal?

11 A. Not that I recall.

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12 Q. Do you know whether they asked you any  
13 questions, for example, about the severance  
14 provision that said you would discuss matters?

15 A. Not that I recall.

16 Q. In fact, in the last seven months, do you  
17 recall any discussions where the UAW asked you  
18 what that proposal meant?

19 A. No, not that I recall.

20 Q. When Delphi filed its Chapter 11, did it  
21 establish a timetable for 1113/1114?

22 A. Could you clarify a timetable?

23 Q. When Delphi filed Chapter 11, did it come  
24 to the Court and ask that a timetable be  
25 established for the 1113/1114 process?

18

1 A. I believe it did.

2 Q. And the Court approved that timetable,  
3 didn't it?

4 A. That's my understanding.

5 Q. And that timetable was discussed with the  
6 unions, was it not?

7 A. I believe it was.

8 Q. Would you look at Exhibit 58, please?  
9 This, in fact, is the UAW's statement  
10 regarding that timetable, is it not?

11 A. It is.

12 Q. And that statement, the UAW statement,  
13 recognizes Exhibit 58 -- recognizes that on  
14 October 21st, the company would provide its  
15 proposal, correct?

16 A. That's true.

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17 Q. And that's the proposal that you referred  
18 to the UAW announcement in Exhibit 57, is that  
19 correct?

20 A. That's correct.

21 Q. This timetable in the UAW document says  
22 the next proposal is to come by November  
23 18th, is that correct?

24 A. Yes.

25 Q. And, in fact, you provided them with

19

1 Exhibit 83, the second proposal, prior to  
2 November 18th, didn't you?

3 A. That's true.

4 Q. Were there any discussions between the  
5 UAW and yourself regarding that proposal after  
6 you submitted it?

7 A. Not that I recall.

8 Q. There were no conversations between  
9 anyone at the UAW and you regarding this --  
10 the November 15th proposal?

11 A. There were some informal discussions  
12 regarding the November 15th proposal.

13 Q. Did Delphi's unions take any coordinated  
14 action together between the time of the  
15 October 21st proposal and the time of the  
16 November 15th proposal, so far as you know?

17 A. Could you clarify the question,  
18 coordinated action?

19 Q. Do you have any knowledge of whether the  
20 unions got together?

21 A. I am aware of an effort called mobilizing

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22 at Delphi.

23 Q. And, in your own words, can you tell us  
24 what you understand that action to be?

25 A. I understand that action to be a

20

1 coordinated effort to resist the changes that  
2 Delphi was advancing.

3 Q. Would you take a look at Exhibit 59,  
4 please? Is this the mobilizing Delphi  
5 coalition action that you were discussing?

6 A. Yes, it is.

7 Q. And the date of that announcement?

8 A. Monday, November 7th.

9 Q. And are all the unions that are objectors  
10 to this motion, this 1113/1114 motion, part of  
11 that coalition?

12 A. Yes, they are.

13 Q. Now, after the November 15th proposal was  
14 delivered, did the UAW or the coalition make  
15 any public pronouncements about the second  
16 proposal?

17 A. Yes, they did.

18 MR. SIMON: Your Honor, objection.

19 I'm tolerant but I fail to see the connection  
20 between the redirect and the cross?

21 MR. BUTLER: Your Honor, the  
22 connection is simply there was lots of -- on  
23 the cross-examination, there were questions  
24 about what statements were made between the  
25 parties, whether they rejected the proposals

1 or not. You have public statements of  
2 rejection here where they say where they say  
3 we reject these proposals. This next exhibit  
4 is going to talk to, quote -- this is by all  
5 the unions a joint pronouncement that the  
6 contract proposal is not even a framework.  
7 And, you know, I think it is -- in part of  
8 what Your Honor needs to determine is the good  
9 faith of the parties.

10 MR. SIMON: It stretches -- it's  
11 interesting. It might be relevant. The  
12 problem is it's beyond the scope of cross.

13 THE COURT: Well, I'm trying to  
14 think back. I don't think -- I think it is  
15 beyond the scope of your cross, but other  
16 unions did raise the point about responses, so  
17 --

18 MR. SIMON: I thought perhaps by  
19 raising the objection, we might shorten the  
20 proceeding. I accept Your Honor's ruling.

21 MR. BUTLER: I mean, I have to  
22 redirect Your Honor to 350 question that were  
23 asked over a five and a half hour period.

24 THE COURT: All right. So, you can  
25 go ahead.

1 BY MR. BUTLER:  
2 Q. So, my question to you, Mr. Butler --  
3 THE COURT: If you could do it as briefly

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4 as possible, though, 'cause it is in the  
5 record.

6 THE WITNESS: Could you repeat the  
7 question?

8 BY MR. BUTLER:

9 Q. I just wanted to point to your attention  
10 page -- to Exhibit 62 and the joint statement  
11 by all of these unions at the fifth paragraph.  
12 Just that sentence. Would you read just that  
13 sentence into the record, please?

14 A. "Delphi's contract proposal is not a  
15 framework for an agreement but a roadmarker for  
16 confrontation."

17 Q. And, as Delphi's chief labor negotiator,  
18 did you read that statement when it was issued  
19 the next day, the day after your proposal was  
20 issued?

21 A. I did.

22 Q. And did you reach any conclusions about  
23 the unions' position on your proposal?

24 A. I viewed that as a rejection of our  
25 November 15th proposal.

23

1 MR. SIMON: Yes, Your Honor. It was  
2 objectionable but the answer was preferable.

3 BY MR. BUTLER:

4 Q. Mr. Butler, in your own words, would you  
5 just tell the Court, and, again, focus on the  
6 UAW since Mr. Simon asks these questions, how  
7 you came about evaluating -- how, as a general  
8 matter, a UAW contracts would be evaluated for

9 inclusion in this motion?

10 A. We had a process of review by the  
11 divisions and the plants from a local  
12 standpoint and then reviewed by the corporate  
13 staff, and at the -- these were contracts that  
14 were under the national agreements that  
15 included the provisions that were  
16 noncompetitive and that would inhibit our  
17 ability to restructure. Said in other words,  
18 we have other agreements with some of the  
19 unions that are not under the national  
20 agreement structure and they are far more  
21 competitive and do not have or do not  
22 represent an impediment to our ability to  
23 restructure. We excluded those.

24 Q. Now, if you look at -- and we'll just --  
25 let's just focus on Exhibit 89. That's what

24

1 Mr. Simon used. You listed a series of  
2 national agreements on pages 1, 2 and 3, is  
3 that correct?

4 A. That's true.

5 Q. As Delphi's chief labor negotiator, do  
6 you have one national agreement with the UAW  
7 or 50?

8 A. We have one.

9 Q. And these all represent different  
10 elements of that one agreement, is that  
11 correct?

12 A. That is correct.

13 Q. Did you make a judgment about -- at any

14 time, about the UAW national agreement and  
15 whether it was competitive or not?

16 A. I did.

17 Q. And what was your judgment?

18 A. That it was not competitive.

19 Q. And once you decided that it was not  
20 competitive, what actions did you decide to  
21 take?

22 A. We decided to reject the agreement in  
23 whole.

24 Q. And how is it that all of these  
25 agreements got listed on pages 1 through 3 if

25

1 you had one agreement?

2 A. They are all various components of the  
3 agreement and local agreements that emanate  
4 from the national agreement.

5 Q. And Mr. Simon asked you about the catch  
6 all at the bottom of page 2, top of page 3.

7 A. Yes.

8 Q. Why did you include that in your list?

9 A. In the event there was something we did  
10 not include such that it would -- there would  
11 be no question that something was left  
12 operable.

13 Q. And how was the approach taken with  
14 respect to local agreements?

15 A. Again, we had a process of review with  
16 the local bargainers working with the  
17 corporate staff to identify all the various  
18 provisions associated with the local

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19 agreements, including local understandings,  
20 memoranda, so forth.

21 Q. These are local agreements regarding a  
22 particular plant. Did you have one agreement  
23 at that plant or did you have 75 agreements at  
24 that plant?

25 A. One agreement and within that there would

26

1 be various understandings or commitments.

2 Q. And when you listed all of these local  
3 agreements in this proposal at Exhibit 89, why  
4 did you list all of the local agreements, like  
5 the Christmas lunch agreement, or whatever it  
6 was?

7 A. It was our intent to reject the local  
8 agreements in total.

9 Q. And why did you put catch-all provisions  
10 in the proposal?

11 A. In the event that we missed something,  
12 did not name it, that there be no question it  
13 was left operable -- that we did not list it  
14 that there be any question it was left  
15 operable.

16 Q. Is it fair to say you didn't want to have  
17 a "gotcha?"

18 A. That's fair to say.

19 Q. I'd like you to look at paragraph 29 of  
20 Exhibit 89. This -- it's called Complete  
21 Agreement and Waiver. You've testified that's  
22 the so-called zipper provision, is that  
23 correct?

24 A. Yes.

25 Q. And that's not blacklined so that was in

27

1 there since October 21 of 2005, is that  
2 correct?

3 A. That's correct.

4 Q. And just flip back a couple of pages.

5 Let's look together and find the no-strike  
6 provision. That was on page 21 here. That's  
7 not blacklined, either. That was in since  
8 October 21, too.

9 A. There is a blackline for OAR picketing.

10 Q. Okay. Other than the OAR picketing?

11 A. That's true.

12 Q. And the -- page 28 has a paragraph called  
13 Dispute Resolution, is that correct?

14 A. That's correct.

15 Q. And that's not blacklined, either. So  
16 that was in since October 21st?

17 A. That's correct.

18 Q. And there's also, on page 27 -- this  
19 hasn't -- the unions didn't ask you questions  
20 about this but it's in the agreement -- they  
21 went through. This definitive documentation  
22 provision?

23 A. Yes.

24 Q. In your own words, will you tell us --  
25 tell the Court what that provision means?

28

1 What it meant to you when you put it in the  
2 document?

3 A. This was intended to deal with the fact  
4 that this term sheet did not represent final  
5 language and all aspects and provided  
6 capability for the parties to work through  
7 that.

8 Q. And this isn't blacklined so the same  
9 provision existed since October 21st, is that  
10 correct?

11 A. That's correct.

12 Q. And, Mr. Butler, you will recall the  
13 question, and virtually every union lawyer  
14 asked you a series of questions about how  
15 these provisions work with each other based on  
16 things that were in discussion under the  
17 various provisions. Do you recall?

18 A. I do recall.

19 Q. All right. Prior to today's cross-  
20 examination, did any union representative ever  
21 ask you that same question?

22 A. No.

23 Q. So, not one of them?

24 A. None.

25 Q. Did you have any questions with the UAW

1 before you withdrew the -- made the public  
2 announcement of withdrawing formally the  
3 November 15th proposal -- that would be  
4 Exhibit 83, which you did -- you testified you

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5 did on December 19th?

6 A. Yes, I did.

7 Q. Will you describe for the Court the  
8 substance of those discussions?

9 A. The substance of the discussions went to  
10 trying to create an environment for  
11 negotiation dialogue and progress on our  
12 issues and the UAW had indicated that the  
13 presence of the November 15 proposal was an  
14 impediment to such. And we sought to  
15 understand that a conditional withdrawal -- if  
16 we were to do that, would that provide a more  
17 conducive environment for negotiations. And  
18 it was indicated it would.

19 Q. Did you have -- based on those  
20 discussions, did you form any expectation  
21 about what might be anticipated from the UAW  
22 if you took the public action of formally  
23 withdrawing that proposal?

24 A. It was our expectation that we would  
25 engage in earnest and serious negotiations.

30

1 Q. And, as to -- did you expect them then to  
2 respond to your November 15 proposal even  
3 though you had publicly withdrawn it?

4 A. It was certainly our hope that would be  
5 the case.

6 Q. Did they ever give you a response, formal  
7 or informal, beyond the public rejections?

8 A. We did not get a comprehensive proposal,  
9 informal or otherwise, to counter that.

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10 Q. Now, you've already pointed to the UAW's  
11 timetable exhibit where they let the members  
12 of the public understand the timetable for  
13 11/13. When the debtors made adjustments --

14 MR. SIMON: Objection, Your Honor.

15 That wasn't a UAW timetable. That was a  
16 timetable set by the Court.

17 THE COURT: You should rephrase that  
18 question.

19 MR. BUTLER: I'll rephrase the  
20 question.

21 BY MR. BUTLER:

22 Q. It's the UAW's announcement of the  
23 timetable set by the Court. Was a UAW  
24 document put out to its members and the  
25 general public describing the timetable?

31

1 A. Yes.

2 Q. And you -- did you understand that the  
3 UAW understood the timetable?

4 A. That's my belief.

5 Q. Did you make subsequent adjustments to  
6 the timetable?

7 A. We did.

8 Q. Did you discuss those adjustments with  
9 the UAW prior to making those adjustments?

10 A. Yes, we did.

11 Q. The last of those adjustments was made on  
12 or about the middle of February, was it not?

13 A. That's correct.

14 Q. Did you have specific conversations with

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15 the UAW regarding the movement of the deadline  
16 of February 19th for filing the 1113s to March  
17 31st?

18 A. Yes, we did.

19 Q. In your discussions with them, did you  
20 characterize that extension in any way?

21 A. We did characterize it as an extension to  
22 allow us, in earnest effort, to resolve our  
23 issues and we expected March 31st absent  
24 significant progress to be a hard and fast  
25 deadline, absent significant progress.

32

1 Q. And, in the interim, between those two  
2 dates, you participated in the negotiation of  
3 the UAW/GM/Delphi special attrition program,  
4 isn't that correct?

5 A. That's correct.

6 Q. And that's the document that's at Exhibit  
7 72?

8 A. Yes, it is.

9 Q. In negotiating Exhibit 72, did you, at  
10 any time, have reason to give consideration as  
11 to whether you should break out the attrition  
12 program from an overall deal or just wait to  
13 do an overall deal?

14 A. We had considerable discussion and  
15 consideration of that.

16 Q. Did those discussions include discussions  
17 on that singular topic with the UAW?

18 A. Yes, it did.

19 Q. Did you have discussions with GM about

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20 that?

21 A. Yes, we did.

22 Q. Did you have discussions with your board  
23 of directors about that?

24 A. Yes, we did.

25 Q. Is that what you referred to as the one-

33

1 step, two-step discussion?

2 A. Yes. A two-step versus a one-step.

3 Q. In your own words, will you just give the  
4 Court a brief synopsis of what you believe the  
5 risks and benefits were of a one-step versus a  
6 two-step approach in these negotiations?

7 A. The risks, of course, would be to -- if  
8 we broke this process into two steps, that  
9 (a)we might stall after having provided the  
10 attrition program or have whatever changes  
11 made through the attrition program used as a  
12 basis against an 1113/1114 proceeding. The  
13 benefits of this approach were to act in good  
14 faith to try to resolve our issues, make  
15 progress and provide soft landing support for  
16 employees in any event that changes needed to  
17 be made beyond that which, of course, a total  
18 solution would require.

19 Q. You ultimately decided to do the one-step  
20 -- rather, two-step, is that correct?

21 A. We did.

22 Q. And why -- in your own words, will you  
23 explain to the Court why you did the two-step?

24 A. We believed that, given -- that General

25 Motors and the UAW were both supportive of

34

1 trying to partition this very complicated  
2 problem and to provide some progress would be  
3 a constructive action to take and action in  
4 good faith.

5 A. In the final weekend of negotiations  
6 regarding Exhibit 72, was there time spent by  
7 all three parties addressing the potential  
8 impact of a two-step on the 1113 process?

9 A. Yes, there was.

10 Q. Did you communicate any positions of  
11 Delphi Corporation to the UAW regarding that  
12 particular subject matter?

13 A. Yes. I communicated that we had concerns  
14 that this action taken to craft a attrition  
15 program not prejudice, if you will, our  
16 abilities to proceed, if necessary, on  
17 1113/1114.

18 Q. Had the -- had you communicated at or  
19 prior to that weekend the company's intention  
20 to file the 1113 on March 31st absent a  
21 consensual agreement?

22 A. We had.

23 Q. So, on March 22nd, when there was this  
24 two-step agreed to, did you believe that the  
25 second step could be completed by March 31st?

35

1 A. It was hope and desire to do that.

2 Q. Did the -- were there any discussions  
3 with the union? Did the union discuss with  
4 you how to get to that second step between  
5 March 22nd and March 31st?

6 A. We had discussion about partitioning the  
7 problem, if you will, between attrition sites,  
8 disposition of sites, and work rules, wages  
9 and benefits.

10 THE COURT: I'm sorry. Could you  
11 say that again?

12 THE WITNESS: We had discussions  
13 three-way, actually, between the parties on  
14 how to attack the problem. And so, we talked  
15 about an attrition plan. We talked about  
16 ascertaining the disposition of the sites.  
17 What would be sold, kept, wound down, as well  
18 as then dealing with flexibility issues, our  
19 ability to sell jobs bank and so forth, Your  
20 Honor. And including wage and benefits.

21 BY MR. BUTLER:

22 Q. I'd like you to take a look -- and, by  
23 the way, two days after you signed the special  
24 attrition program, you delivered the March  
25 24th proposal, which is Exhibit 89, is that

36

1 correct?

2 A. That's correct.

3 Q. Had you discussed any of the blackline  
4 changes in Exhibit 89 with the unions, with  
5 the UAW, prior to delivering Exhibit 89 to  
6 them?

7 A. Yes, I had.

8 Q. When did those discussions commence?

9 A. In January.

10 Q. In your own words, will you please

11 describe to the Court, generally, the

12 substance of those discussions?

13 A. Those discussions, again, which took  
14 place in a three-party environment -- we  
15 described the basic elements of the March 24th  
16 proposal that differed from the November 15th,  
17 including a wage step-down approach, a buy-  
18 down concomitant with the second wage step-  
19 down, some potential enhancement in health  
20 care and a period of voluntary attrition  
21 followed by a mandatory attrition date in  
22 September of '07.

23 Q. I'd like you to look at Exhibit 89. Take  
24 a moment and examine it. If you can, answer  
25 this question. As you're flipping through the

37

1 underlying provisions, are any of the subjects  
2 that are the subject matter, the topics that  
3 are the subject of blacklines, topics that you  
4 had not described or discussed with the UAW  
5 prior to them receiving that proposal on March  
6 24th?

7 A. I don't recall discussing a performance  
8 bonus of three percent prior to that. And as  
9 I sit here, I am uncertain whether I mentioned  
10 profit-sharing. I believe I did but I'm  
11 uncertain, specifically, as it relates to

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12 that. And I -- I don't believe, to the extant  
13 of detail and sub-benefits, that we discussed  
14 that in great detail.

15 Q. Other than those subjects, profit-  
16 sharing, performance bonuses, supplemental  
17 benefits, any other topic that was blacklined  
18 not discussed with them prior to the delivery?

19 A. To the best of my recollection, I believe  
20 they were covered.

21 Q. Mr. Kennedy, in his cross-examination,  
22 asked you very specific questions about formal  
23 proposals. Do you recall that testimony,  
24 those questions and your answers?

25 A. I do.

38

1 Q. Did you have any discussions with any  
2 representative of the IUE from October through  
3 today that were not formal?

4 A. Yes. In terms of general discussion,  
5 yes, I did. Yes, I've had informal  
6 discussions with the IUE.

7 Q. Have those discussions been just recently  
8 or over a period of months? Can you give the  
9 Court some sense of the time frame?

10 A. There have -- they have occurred on  
11 periodic occasions through the months.

12 Q. Did they begin last fall?

13 A. Yes, it did.

14 Q. Did they stop at any time?

15 A. No, they did not.

16 Q. You were asked in your cross-examination

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17 about how often there were meetings with the  
18 United -- the Steelworkers and with the  
19 IUE/CWA. Do you recall those questions?

20 A. I do.

21 Q. Are you the person at Delphi primarily  
22 responsible for conducting those meetings?

23 A. No, I am not.

24 Q. Who conducted those meetings? Who had  
25 that responsibility?

39

1 A. Principally, that would be Mr. Quick.

2 Q. Okay. I'd like you to look briefly at  
3 Exhibit 12, please. And, specifically,  
4 Exhibits A and C. Exhibit 12 is Mr. Quick's  
5 declaration. Exhibit A -- I'm not going to  
6 ask you about the subject of these meetings  
7 because they're Mr. Quick's meetings, but  
8 these are the list -- Exhibit A is the list of  
9 meetings that Mr. Quick has said he's had with  
10 the IUE/CWA, is that correct?

11 A. I believe that's true.

12 Q. And does Mr. Quick report to you?

13 A. He reports to Darryl Kid.

14 Q. And --

15 A. Mr. Kid reports to me.

16 Q. Would you have received summaries of any  
17 of these meetings in terms of being updated on  
18 the progress of these discussions over the  
19 course of the seven months?

20 A. There would be general feedback to me.

21 Q. Is the same true with Exhibit C, which is

22 Mr. Quick's list of the listing of the  
23 meetings with the United Steelworkers?

24 A. That's correct.

25 Q. In your cross-examination, you were asked

40

1 a lot about the so-called one-size-fits-all  
2 proposals.

3 A. Yes.

4 Q. Do you recall that?

5 A. I do.

6 Q. In -- as you evaluated these proposals,  
7 Mr. Butler, do these proposals impact every  
8 union the same way?

9 A. No, they do not.

10 Q. In your own words to the Court, can you  
11 explain what you mean by that answer?

12 A. As one example, the proposals that would  
13 call for a modification of wages would have a  
14 greater impact on certain unions that have  
15 more or a higher proportion of their members  
16 at full wage versus competitive wage, as  
17 example.

18 Q. I want to turn now to the testimony that  
19 you -- the questions you were asked about  
20 negotiating the 2007 collective bargaining  
21 agreements with the unions. Do you recall  
22 that testimony?

23 A. 2007?

24 Q. You were asked by counsel to Appaloosa  
25 why not wait and simply negotiate this in

1 2007. Do you recall that?

2 A. Yes, I do.

3 Q. And when did these contracts expire?

4 A. In 2007?

5 Q. When precisely?

6 A. They vary from September through, I

7 believe, October.

8 Q. Okay. I'm not a labor lawyer, Mr.

9 Butler, so can you tell me, as the lead labor  
10 negotiator for Delphi, when would the  
11 negotiations regarding the September/October  
12 2007 collective bargaining agreements begin to  
13 be negotiated?

14 A. We would generally, formally, kick off  
15 negotiations in the mid-summer of 2007 but  
16 then the focus within the pattern environment  
17 that we're in with all the OEMs, we would tend  
18 to be focused on after the conclusion of the  
19 OEM bargaining.

20 Q. Do you have a view, as Delphi's chief  
21 labor negotiator, as to whether or not you  
22 could complete your negotiations for Delphi  
23 prior to the OEM negotiations being completed?

24 A. Within the pattern that we -- and  
25 experience we've had within that pattern, no,

1 we would not.

2 Q. So, when would the unions likely turn to

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3 you?

4 A. After completion of the OEMs, which would  
5 likely be sometime in September/October where  
6 it would commence.

7 Q. You were asked about impasse bargaining.

8 Can you explain to the Court in your own words  
9 what that is?

10 A. In my words, impasse bargaining is to  
11 bargain in good faith, in earnest, until it  
12 becomes clear we're hopelessly irreconcilable  
13 and no practical prospect for a resolution.

14 Q. Do you have any sense of -- from a time  
15 perspective, when an impasse like that would  
16 be achieved?

17 A. Certainly, it would take, I think,  
18 several weeks.

19 Q. And could that happen this week for  
20 October 2007?

21 A. I don't believe so.

22 Q. Could it happen this summer?

23 A. I don't believe so.

24 Q. Why?

25 A. Because the natural kinks of bargaining,

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1 particularly, with difficult issues, is -- you  
2 are driven to closure by deadlines.

3 Q. So do you have a view, as Delphi's chief  
4 labor negotiator, as to when impasse on the  
5 October or the September/October collective  
6 bargaining agreements might occur, if it would  
7 occur at all?

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8 A. It would be, in my opinion, at least 30  
9 days beyond the end of the OEM cycle, perhaps  
10 longer depending on the nature of the issues.

11 Q. And what happens if you reach impasse at  
12 that point in time?

13 A. At that point in time, if we are at  
14 impasse and the agreement is not extended,  
15 then we have the -- we have the ability to  
16 impose. And the union, of course, has the  
17 ability to strike.

18 Q. Do you recall you were asked a series of  
19 questions that were very specific about  
20 economic analyses and other kinds of analyses  
21 relating to a strike in or around the third  
22 quarter of 2007 versus this summer?

23 A. I do.

24 Q. I'd like you, in your own words, to  
25 describe for the Court your own evaluation,

44

1 however you have come to it, comparing the  
2 risks to Delphi of a strike now or a strike in  
3 October 2007?

4 A. In my opinion, a strike in 2007, given  
5 the cadence of bargaining and on the  
6 assumption of bargaining impasse, would be far  
7 more devastating to Delphi than a strike this  
8 summer. And I base that on both my  
9 understanding and belief that the company  
10 grows weaker across time without resolution  
11 and that it also has significant impact, in  
12 that there is an impact as it relates to our

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13 impact on customers, if there is a strike as  
14 they are in new model launch in the fall  
15 versus if there were such action here in the  
16 new term, depending on the timing and duration  
17 and our stronger standing, financially, I'm  
18 assuming, at this time versus later without  
19 relief. I think it would be a much more  
20 devastating impact later.

21 Q. When you said in that testimony "grow  
22 weaker," what did you mean by that?

23 A. It's -- it's my understanding that at the  
24 operating level of the organization, we are  
25 experiencing negative cash flow. And in our

45

1 business, if we are fundamentally weaker --  
2 our business is such that we bid, as I think  
3 was mentioned by David Resnick yesterday, in  
4 large chunks of bids or large chunks of  
5 revenue, if you will -- often several hundred  
6 million dollars of revenue at a time for  
7 programs that last for multiple years and are  
8 placed three to four years out with the  
9 customers. And if it is not clear that we are  
10 financially viable, that puts us at risk with  
11 customer behavior. And if we are experiencing  
12 negative operating cash flow, we become weaker  
13 as an organization, as well.

14 Q. Mr. Butler, one last question. With  
15 respect to those unions who unilaterally  
16 negotiated benefit guarantees with General  
17 Motors, in your judgment, would it be easier

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18 or more difficult to negotiate a resolution of  
19 the issues -- labor issues that are facing the  
20 company after the GM benefit guarantee  
21 expires?

22 A. I believe it would be much more  
23 difficult.

24 Q. And why?

25 A. Because the benefit guarantee, I believe,

46

1 acts as its own form of soft landing, if you  
2 will, to mitigate the impact of the changes  
3 that are necessary to make Delphi viable.

4 MR. BUTLER: No further questions,  
5 Your Honor.

6 THE COURT: Okay.

7 MR. SIMON: Could we have a stay-in-  
8 place one minute --

9 THE COURT: You want to talk to  
10 yourselves? Yeah, that's fine. This is on  
11 the redirect, Mr. Kennedy?

12 MR. KENNEDY: Yes, Your Honor. All  
13 right. The order will be I'll be doing a  
14 brief redirect. The other unions have a few  
15 questions and then we --

16 THE COURT: Well, re-cross.

17 MR. KENNEDY: Re-cross.

18 THE COURT: On the redirect.

19 MR. KENNEDY: Pardon?

20 THE COURT: On the redirect.

21 MR. KENNEDY: Yes. Cross on the  
22 redirect.

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23 RECROSS-EXAMINATION BY

24 MR. KENNEDY:

25 Q. I want to just clear something up, Mr.

47

1 Butler, that I believe may have been confused,  
2 if you'll just follow me a little bit. On  
3 redirect, you indicated -- if you look at page  
4 -- or, rather, excuse me, Exhibit 89, which is  
5 the March 2004 exhibit, that -- do you want to  
6 get it?

7 A. Yeah. Yes.

8 Q. I believe you indicated on redirect that  
9 the matters that do not appear to be  
10 blacklined or stricken in Exhibit 89 were  
11 present in the original offer, which is  
12 Exhibit 77, correct?

13 A. I believe that's true.

14 Q. All right. Would you do me a favor and  
15 look at Exhibit 83, which is the middle  
16 exhibit, the November 15 proposal?

17 A. I have it.

18 Q. Now, if you look at Exhibit -- or, I  
19 should say, page B2 of Exhibit 83, you'll note  
20 that there is a strikeout in replacement of  
21 some numbers that reflect monthly  
22 contributions for medical and prescription  
23 drug coverage?

24 A. Yes.

25 Q. Okay. And then, if you turn to Exhibit

48

1 89 and go to that same B2 -- are you at that  
2 page, sir?

3 A. I am.

4 Q. You'll note that the strikeout does not  
5 appear on that same item, the monthly  
6 contributions for medical and prescription  
7 drug coverage.

8 A. Yes, that's true.

9 Q. So, would you agree with me that, in  
10 fact, the strikeouts that appear in the March  
11 24th proposal, which we've marked as Exhibit  
12 89, only reflect the differences from the  
13 November 15th proposal, that we've marked as  
14 83, and do not go back to the original  
15 proposal?

16 A. In this instance, I believe that's true.

17 Q. Well, isn't that true, in general, sir?

18 A. I would have review the document each --

19 Q. All right. So, your testimony would  
20 really only be what you observe of the  
21 documents. You don't either way for a fact,  
22 is that correct?

23 A. As a -- I would have to review the  
24 documents in detail to give a detailed answer.

25 Q. Okay. Now, with respect to Document 89,

1 at page 27, your counsel directed your  
2 attention to the definitive documentation  
3 section in your -- I'm sorry. It's Exhibit  
4 89, page 27.

5 A. Yes.

6 Q. All right. And counsel directed your  
7 attention to the definitive documentation  
8 section and I note that the last phrase of  
9 that indicates that the parties agree that  
10 they will "modify any provisions of the  
11 current UAW/Delphi agreements" -- and I  
12 believe this is repeated in the IUE/CWA  
13 language as well -- "that are inconsistent  
14 with this term sheet or which would preclude  
15 the corporation from obtaining the full  
16 savings sought by this proposal." Now, wasn't  
17 it your position at the time you gave this  
18 proposal on March 24th that you did not need  
19 to identify to the unions the amount of  
20 savings that Delphi was expecting to obtain  
21 from its proposals?

22 A. It was not our objective to stipulate a  
23 dollar amount but rather a competitive  
24 agreement.

25 Q. So, given the fact that you were not

50

1 asked -- you were not telling even the unions  
2 what savings you were looking to achieve, how  
3 could you ask them to agree that they would do  
4 nothing that would preclude you from obtaining  
5 the full savings that you were seeking by the  
6 proposal?

7 A. I believe our intent was -- if,  
8 effectively, some provision was in conflict,  
9 that would not allow us to be competitive and,

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10 therefore, not allow us the full savings.

11 That was not our intent.

12 Q. So that this was intended as a catch-all  
13 provision ensuring that if in your -- in the  
14 company's view, any aspect of this proposal --  
15 of its contract was uncompetitive, the unions  
16 would be required to agree to language which  
17 would address that?

18 A. That we would -- yes. We would eliminate  
19 or modify those provisions that would inhibit  
20 that.

21 Q. You testified in your redirect concerning  
22 a press release that was put out by the  
23 mobilization at Delphi Group. I think that's  
24 Exhibit 59.

25 A. Yes.

51

1 Q. And you -- you read that as a rejection  
2 of the proposal that had been provided on  
3 October 20th?

4 A. Yes.

5 MR. BUTLER: Objection, Your Honor.

6 That's not the right exhibit reference.

7 MR. KENNEDY: I apologize. I don't  
8 have it in front of me.

9 MR. BUTLER: He testified to Exhibit  
10 62, not Exhibit 59.

11 MR. KENNEDY: Well, thank you. I  
12 appreciate that. I meant 62.

13 BY MR. KENNEDY:

14 Q. I'm referring to the mobilization at

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15 Delphi press release.

16 A. Yes.

17 Q. Now, you're an experienced bargainer,  
18 correct?

19 A. Yes.

20 Q. Did it surprise you that the unions were  
21 saying negative things about the proposal that  
22 had been made on October 20th?

23 A. Not particularly.

24 Q. Isn't it true that it's not uncommon for  
25 private negotiations to actually proceed

52

1 while, at the same time, on a public level,  
2 the parties are quite at opposite ends of the  
3 spectrum?

4 A. It does if there are different signals,  
5 if you will, between private and public.

6 Q. But wouldn't it be fair to say that it  
7 was not reasonable, just looking at -- alone  
8 at the press release, to interpret a press  
9 release as a substantive bargaining response?

10 A. I think the press release was  
11 confirmation of other input that we were  
12 receiving directly.

13 Q. But I was asking that the press release  
14 itself, in your view as an experienced  
15 bargainer, would be a reasonable place to  
16 judge what a union's position was on proposals  
17 that had been given to them?

18 A. I have experience where press releases  
19 are different than the other private

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20 communication we have.

21 Q. Now, you were asked about meetings that  
22 took place between the company and the UAW in  
23 your redirect?

24 A. Yes.

25 Q. I'd like to direct your attention to your

53

1 supplemental declaration which, I believe, is  
2 Exhibit 8?

3 A. Yes.

4 Q. And Exhibit 8 -- I'll wait till you're at  
5 it.

6 A. Yes.

7 Q. Exhibit 8 has attached to it a chart  
8 that's entitled Kevin Butler Meeting With  
9 Unions?

10 A. Yes.

11 Q. And would you agree with me that from  
12 October 21st through March 24th, you met with  
13 the UAW 15 or 16 times and with the IUE once?

14 A. I'm sorry. Could you give me the dates  
15 again?

16 Q. Sure. October 21st --

17 A. Right.

18 Q. -- through March 24th.

19 A. I met with the UAW several times and the  
20 IUE, from this period -- from the 21st?

21 Q. Yeah.

22 A. Three times.

23 Q. Well, I'm asking, from the 21st -- which  
24 is the date of October 21st --

25 A. Oh, I'm sorry.

54

1 Q. I'll tell you why I'm doing this. This  
2 isn't calendar manipulation. From the date of  
3 the first proposal that you made through the  
4 point of the March 24th proposal --

5 A. My recollection is we presented a  
6 proposal, I believe, on the 20th, at least,  
7 the framework review of that with the IUE.  
8 And then we had another meeting after that.

9 But I was involved in -- on January 30th.

10 Q. All right. So there was one meeting to  
11 present the October proposal with the IUE?  
12 The next meeting was January 30th?

13 A. That's my recollection.

14 Q. And that January 30th meeting, you've  
15 entitled a leveling-up meeting?

16 A. That's true.

17 Q. And we know that that's for the purpose  
18 of explaining to the IUE what's happening with  
19 the other unions, right?

20 A. That's true.

21 MR. KENNEDY: All right. No other  
22 questions, Your Honor.

23 THE COURT: Okay.

24 MR. KENNEDY: Though there are  
25 others to follow.

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1 RECROSS-EXAMINATION BY

2 MR. PETERSON:

3 Q. Hello, again, Mr. Butler. I don't want  
4 to belabor this bargaining in the press line -  
5 -

6 A. Good afternoon.

7 Q. -- because I don't know how productive it  
8 is. But if you will take a look at the  
9 exhibit you were asked about, Exhibit 59,  
10 Unions' Forum Mobilizing at Delphi Coalition?

11 A. Yes.

12 Q. Take a look at the last sentence. Could  
13 you read that out loud?

14 A. "Our unions have demonstrated time and  
15 again our willingness and ability to develop  
16 innovative, effective and fair approaches to  
17 solving problems."

18 Q. Now, you wouldn't read that as a  
19 statement that the unions were not willing to  
20 bargain with Delphi, would you?

21 A. No, I would not.

22 Q. Has anyone from the Steelworkers ever  
23 said, to your knowledge, to anyone at Delphi  
24 that the Steelworkers are not willing to  
25 negotiate changes to the Steelworkers'

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1 agreements?

2 A. Not that I am aware of.

3 MR. PETERSON: Thank you.

4 RECROSS-EXAMINATION BY

5 MS. ROBBINS:

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6 Q. I'll start out with the same question.

7 Has anyone from the IAM or the IBEW ever said  
8 to you that they were unwilling to negotiate?

9 A. Not that I am aware of.

10 Q. When counsel asked you a question  
11 concerning the status of the employees who are  
12 represented by the unions and you mentioned  
13 the leasing agreement and a LLC that had some  
14 of the relationship of an employer, I wanted  
15 to ask you, in terms of your reference to  
16 Delphi Corporation, are you familiar that the  
17 agreements between the IAM and the IBEW are  
18 between Delphi Corporation and those unions?

19 A. I am.

20 Q. You made a reference -- your counsel  
21 asked you a question as to whether before  
22 today -- excuse me -- whether before today  
23 anyone had raised the issue of the conflict  
24 between your complete agreement and waiver and  
25 all of the issues that still needed to be

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1 discussed. My question to you is to whether  
2 you have reviewed the counterproposal which  
3 the IBEW and the IAM submitted on April 20th?

4 A. I have generally reviewed it.

5 Q. Would you take a look at Exhibit 198,  
6 which is the exhibits to a declaration and,  
7 specifically, to the IAM/IBEW counterproposal,  
8 page 8 of 9? I think it's the very last page  
9 of Exhibit 198.

10 A. Page 8 of -- 9 of 9, counsel?

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11 Q. No. Page 8 of 9.

12 A. 8 of 9. I'm sorry.

13 Q. And do you see in the left-hand column of  
14 that page a reference to Complete Agreement  
15 and Waiver?

16 A. Yes.

17 Q. And do you see a rationale that explains  
18 the unions' position with respect to that  
19 proposal? Do you see that?

20 A. I do see that.

21 Q. Would you read it?

22 A. Yes. "Particularly, where the company  
23 seeks to remove existing understanding  
24 settlements and agreements, there will be  
25 necessity of continuing negotiations to

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1 resolve issues related to any existing  
2 agreements and understandings which have been  
3 removed. In the absence of such negotiations,  
4 there will be continuous litigation which is  
5 expensive, inefficient and time consuming."

6 Q. So, you did get a response that pointed  
7 out the conflict between your indefinite  
8 proposals and the waiver of agreement?

9 MR. BUTLER: Objection to the  
10 characterization of the agreements, Your  
11 Honor.

12 BY MS. ROBBINS:

13 Q. Would you agree with me that you did  
14 receive a response, before your cross-  
15 examination, with respect to the conflict

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16 between the complete agreement and waiver  
17 proposal and other issues left open?  
18 A. I would agree that there is a rejection  
19 and rationale regarding the complete agreement  
20 and waiver.

21 Q. And does that point out to you the  
22 conflict between that waiver and other  
23 provisions of your proposal?

24 A. That's unclear to me.

25 Q. Have you gotten back to the IBEW and the

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1 IAM in response to this explanation of their  
2 problem with your proposal?

3 A. We have not. I have not.

4 MS. ROBBINS: No further questions,  
5 Your Honor.

6 THE COURT: Okay.

7 RECROSS-EXAMINATION BY

8 MS. MEHLSACK:

9 Q. Mr. Butler, you were asked about meetings  
10 with other unions other than the UAW and, I  
11 believe, you stated that you have summaries of  
12 meetings received from your staff of meetings  
13 with the other unions. Do you have any  
14 summaries from your staff of meetings between  
15 your staff and the Operating Engineers?

16 A. I think I indicated that I get general  
17 input or recap. I don't believe I have any  
18 written summaries.

19 Q. Mr. -- I will ask the reporter to read  
20 back the answer to the question, if necessary,

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21 but you specifically used the word summaries,  
22 Mr. Butler. Are you now retracting that  
23 testimony? You do not have summaries of those  
24 meetings?  
25 A. Sorry, counselor. I took your remark to

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1 be written summaries and I -- if I used the  
2 term summaries, I meant I get verbal input  
3 after meetings.

4 Q. So, it is your statement today you have  
5 no written summaries from your staff, no  
6 written accounts of any kind. No memos, no  
7 emails, nothing in writing that summarizes  
8 accounts -- that gives you a summary account  
9 of meetings of your staff with the Operating  
10 Engineers.

11 A. I may have written documents. I meant to  
12 infer that I have no standard regular written  
13 summaries.

14 Q. Mr. Butler, please. Standard or  
15 otherwise, do you have written accounts from  
16 your staff of meetings with the Operating  
17 Engineers and what occurred during those  
18 meetings?

19 A. Not that comes to mind, no.

20 Q. So that if I were to request counsel to  
21 produce any such summaries, there will be  
22 nothing produced, as far as you recall?

23 A. As I sit here, I do not know. There may  
24 be emails.

25 MR. BUTLER: Your Honor, I'll just

1 -- at this point, I've been waiting -- my  
2 question to -- if you go back and look and the  
3 record, my question to Mr. Butler had nothing  
4 to do with this union. I asked about specific  
5 summaries of meetings that Mr. Quick had with  
6 two specific unions.

7 MS. MEHLSACK: Mr. Butler, you did  
8 not ask about summaries. You asked about  
9 meetings and Mr. Butler offered -- volunteered  
10 the information that he had summaries of  
11 meetings. I'm going to make a formal request  
12 on the record. Will you provide me, please,  
13 with any summaries that exist of meetings  
14 between the Operating Engineers and Mr.  
15 Butler's staff?

16 MR. BUTLER: For what purpose?

17 MS. MEHLSACK: So that I can review  
18 them for cross-examination of Mr. Gerling. So  
19 that I can review them for purposes of writing  
20 -- of delivering a closing statement.

21 MR. BUTLER: I'll be happy to meet  
22 and confer with you after this. If you're  
23 unhappy with the response, you can to Court.

24 MS. MEHLSACK: Thank you.

25 RECROSS-EXAMINATION BY

1 MR. LAURIA:

2 Q. My name is Tom Lauria. Good afternoon,

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3 Mr. Butler. Just a couple of quick questions.

4 What is the total liquidity of Delphi today?

5 A. That's -- I do not recall.

6 Q. Isn't it true that it's over three  
7 billion dollars?

8 A. That sounds -- that sounds correct to me,  
9 but I do not recall.

10 Q. Isn't it true that the company has over  
11 1.75 billion dollars of availability on its  
12 DIP facility?

13 A. That could me. That number -- the  
14 specific number I don't -- I don't recall.

15 Q. All right. Isn't it true that the  
16 company monitors its actual and anticipated  
17 liquidity on a regular basis?

18 A. I believe that's true.

19 Q. You don't of any reason you couldn't seek  
20 Court relief, with respect to your CBAs, at  
21 any time when the company determines that its  
22 liquidity got to or approached a danger zone,  
23 do you?

24 MR. BUTLER: Objection. Outside of  
25 redirect. I don't know what that was about.

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1 THE COURT: No, I don't think so.

2 He was talking about the company's decreasing  
3 resources over the time between now and  
4 September of 2007.

5 MR. BUTLER: I'll withdraw it, Your  
6 Honor.

7 THE WITNESS: I'm sorry, counselor.

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8 Could you repeat the question?

9 BY MR. LAURIA:

10 Q. You don't know of any reason why you  
11 couldn't seek Court relief, with respect to  
12 your collective bargaining agreements, at any  
13 time when the company determined that its  
14 liquidity got to or approached a danger zone,  
15 do you?

16 A. I believe that we could seek relief and  
17 there would be the risks of -- if we were  
18 moving into a danger zone that it would  
19 threaten our revenue and our relationship with  
20 customers.

21 Q. But you don't know of any reason you  
22 couldn't seek that relief, do you?

23 A. Not that I'm aware of.

24 Q. Isn't it true that you're already  
25 negotiating work rules, in terms of

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1 employment, that would be effective the  
2 expiree of the current collective bargaining  
3 agreements?

4 A. I'm sorry. Again? Could you repeat the  
5 question, please?

6 Q. Isn't it true that you're already  
7 negotiating work rules and work terms that  
8 would be effective after the expiree of the  
9 current collective bargaining agreements?

10 A. I'm -- I'm uncertain as to --

11 Q. Could you look at Exhibit 89, please?

12 A. Yes.

13 Q. Para -- page 5. The heading Duration.

14 And maybe you could just read it out loud for  
15 the Court?

16 A. I'm sorry. Again? Exhibit?

17 Q. 89.

18 A. 89, thank you. And if you could give me  
19 the specific reference again, counselor?

20 Q. Page 5.

21 A. Thank you.

22 Q. The section entitled Duration?

23 A. Yes.

24 Q. Could you just read that out loud for the  
25 Court, please?

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1 A. "The UAW/Delphi National/Local Agreements  
2 as modified by this term sheet shall continue  
3 in effect until 11:59 on May 2010, subject to  
4 the modification and termination provisions of  
5 Paragraph 223 of the UAW National Agreement --  
6 UAW/Delphi National Agreement."

7 Q. When did the current agreements expire  
8 again?

9 A. The current agreements expire in 2007  
10 with the exception of Doc 13 for the --  
11 Document 13 for the UAW.

12 Q. May 1, 2010 is after that date, correct?

13 A. Yes, it is.

14 Q. Isn't it true that the current  
15 negotiations would be relevant in determining  
16 if impasse is reached at the end of the  
17 current CBAs?

18 A. It could be.

19 MR. LAURIA: Thanks.

20 RECROSS-EXAMINATION BY

21 MR. SIMON:

22 Q. Good afternoon, Mr. Butler.

23 A. Good afternoon, counselor.

24 Q. I understand from your testimony that you  
25 understood Delphi's November 15th, '05

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1 proposal was not acceptable to the UAW as the  
2 framework for negotiating a comprehensive  
3 agreement, correct?

4 A. That's correct.

5 Q. And you say that you were informed by the  
6 UAW that the November 15th, '05 proposal was  
7 in fact an impediment to such negotiations,  
8 correct?

9 A. That's true.

10 Q. And that withdrawal of that proposal  
11 would provide a more conducive atmosphere for  
12 negotiations, correct?

13 A. That's correct.

14 Q. And you hoped that the withdrawal of your  
15 November 15th proposal would then lead the  
16 parties to engage in responsible and serious  
17 negotiations, correct?

18 A. That's correct.

19 Q. And remove the impediment, correct?

20 A. That's correct.

21 Q. And, indeed, there were serious and  
22 responsible negotiations, were there not?

23 A. There were.

24 Q. And there were, in the context of what  
25 you've described as your agreement, that a

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1 better way to approach those negotiations was  
2 through a multi-step process, correct?

3 A. We agreed that it would be a productive  
4 approach, multi-step.

5 Q. And you shared that judgment?

6 A. Yes.

7 Q. So, on December 19th, you then did  
8 conditionally withdraw your November 15th  
9 proposal, correct?

10 A. That's true.

11 Q. Now, you testified that after your  
12 withdrawal on December 19th, you did not  
13 receive a comprehensive proposal from UAW,  
14 correct?

15 A. That's true.

16 Q. But you had agreed with the UAW and  
17 General Motors in or about that time frame,  
18 perhaps a little or few weeks after your  
19 December 19th withdrawal, that the way to  
20 proceed was not by a comprehensive one-step  
21 exercise but rather through a multi-step  
22 process identifying three areas in which to  
23 approach the problem and prioritizing those  
24 areas, correct?

25 A. As a means to a comprehensive solution.

1 Q. That is correct. And, in fact then, in  
2 connection with those three areas which you  
3 identified and agreed upon, specifically,  
4 attrition, footprint and then wages and  
5 working conditions, you focused on the  
6 attrition program, correct?

7 A. We did.

8 Q. Was that an easy issue?

9 A. That was a very challenging issue.

10 Q. And it was extremely complex, was it not?

11 A. It was.

12 Q. And it involved lengthy, serious, complex  
13 negotiations, some bi-lateral, some tri-  
14 lateral, between UAW, General Motors and  
15 Delphi?

16 A. I think that's a fair representation.

17 Q. Over what period of time did those  
18 negotiations take place?

19 A. Those negotiations? Could you please  
20 clarify?

21 Q. The negotiations over (a)the  
22 establishment of the three-step process;  
23 (b)the prioritizing of the issues; and (c)the  
24 resolution of the attrition issue as you've  
25 just described.

1 A. Generally, from -- say, mid-January to  
2 the attrition program conclusion on March  
3 22nd.

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4 Q. And the March 22nd agreement, which the  
5 Court approved last week, and is not doubt  
6 familiar with its complexity was reached on  
7 March 22 and was considered by Delphi to be a  
8 significant achievement, was it not?

9 A. An important step toward a comprehensive  
10 solution.

11 Q. And a significant achievement?

12 A. In regards to an important first step, it  
13 is significant.

14 Q. And it was the completion of the first  
15 step that you had identified as necessary  
16 towards the process of reaching a  
17 comprehensive agreement?

18 A. An important first step but not a  
19 solution in and of itself.

20 Q. Understood. And that important first  
21 step took approximately two months to  
22 negotiate and conclude, correct?

23 A. I think the -- that would not be my  
24 characterization. We spent time talking about  
25 all the issues involved in a total

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1 comprehensive solution. And so, I don't think  
2 it's fair to say it was that entire time  
3 solely on the attrition program.

4 Q. But that was the focus of the  
5 negotiations?

6 A. When we began to focus on the specific  
7 issue at hand, the focus became the attrition  
8 program.

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9 Q. And approximately when, during the mid-  
10 January to March 22 period, would that have  
11 been?

12 A. I believe we began focus on that in  
13 earnest in late February, early March.

14 Q. So that it took three to four weeks to  
15 conclude negotiations once you began to focus  
16 on the attrition program?

17 A. I believe that's roughly appropriate.

18 Q. Close enough?

19 A. Yeah.

20 Q. Well, you described the benefit of  
21 pursuing the multi-step process as being that  
22 the parties, acting in good faith, could make  
23 progress and produce a soft landing, correct?  
24 That was your view of the -- in your  
25 risk/reward analysis of single step against

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1 multi-step, that was your view of the  
2 advantage of pursuing the multi-step process?  
3 A. Particularly, in light of the requirement  
4 for GM's involvement to bring this to life, I  
5 think that's fair.

6 Q. And was that benefit in your risk/reward  
7 analysis as apparent to you on March 22nd as  
8 it was when Delphi made the judgment to go  
9 along with the multi-step rather than the  
10 single step process?

11 A. I'm sorry. Could you repeat the  
12 question?

13 Q. Yeah. You had described the benefit of

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14 pursuing the multi-step process that the  
15 parties acting in good faith could make  
16 progress and produce a soft landing?

17 A. Yes.

18 Q. Okay. And did you still see as a benefit  
19 of the multi-step process, which had two more  
20 steps to go, right? The analysis and  
21 definition and agreement upon what we call the  
22 footprint -- you call it the site solution,  
23 and finally, as the last ingredient, agreement  
24 on the wages, terms and conditions of  
25 employment that would be applicable to the

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1 remaining employees, correct?

2 A. I would only qualify that last piece. It  
3 also included what I've called flexibility  
4 issues, Document 13, jobs bank and so forth.

5 MR. BUTLER: Critical --

6 BY MR. SIMON:

7 Q. I include that in working conditions.  
8 We're in agreement on that subject.

9 A. Thank you.

10 Q. But, in any event, that's the third  
11 bundle of the three-issue bundle?

12 A. Generally speaking, yes.

13 Q. So, on March 22, you had completed  
14 serious, complex negotiations with regard to  
15 critical step number one, the issue you had  
16 identified and prioritized as the first issue  
17 to be dealt with, and that had, in effect,  
18 borne out the wisdom of your December 19th

19 conditional withdrawal to remove the  
20 impediment on negotiations and permit those  
21 negotiations to go forward, correct?  
22 A. It had created a first step and,  
23 arguably, the easiest step of the entire  
24 process.

25 Q. I'm sorry. And?

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1 A. Arguably the easiest step of a total  
2 solution. This was a voluntary program with  
3 incentives and the remaining issues were much,  
4 much, much more difficult to deal with.

5 Q. Thank you. So that having completed the  
6 easiest of the three issues that you had  
7 identified as necessary for a comprehensive  
8 agreement, one which, when you finally focused  
9 upon it, took some three to four weeks to  
10 conclude. It was the easiest one. You now  
11 had two more issues to address. It's now  
12 March 22nd. Did you not understand, Mr.  
13 Butler, that if you were to submit again two  
14 days later a modestly updated version of your  
15 November 15th proposal, which you understood  
16 not to be a framework for negotiations toward  
17 an agreement and which you understood to be an  
18 impediment to negotiations, that you were once  
19 again creating an environment that would not  
20 produce those negotiations and would again  
21 constitute an impediment? Did that not occur  
22 to you?  
23 A. In light of the momentum and the support

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24 that had been garnered from General Motors, we

25 felt that the March 24th proposal, that

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1 included more that could be done with GM  
2 assistance and subsidy, to be a constructive  
3 step.

4 Q. Were you not informed, Mr. Butler, by the  
5 UAW that the submission of such a proposal and  
6 the following of it by an 1113 within days  
7 would constitute an impediment to serious  
8 negotiations?

9 A. I recall the UAW indicating that -- to --  
10 an 1113 filing would complicate the issues of  
11 negotiation.

12 Q. And wasn't, specifically, the word  
13 impediment used in that communication?

14 A. I don't recall.

15 Q. Nevertheless, notwithstanding the fact  
16 that you were so informed by the UAW, as you  
17 had been informed in response to your November  
18 15th proposal, by your own admission, you  
19 nevertheless on October 24th, two days after  
20 your significant achievement, filed virtually  
21 the same proposal that you knew was  
22 unacceptable back in November, correct?

23 A. I believe we provided the proposal that  
24 memorialized the discussions we'd been having  
25 in a three-way -- three-way meetings.

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1 Q. And nine days later, nine days after your  
2 significant achievement on the easiest of the  
3 three elements necessary for a comprehensive  
4 agreement, that had taken three to four weeks  
5 to negotiate extremely complex, but you say  
6 the simplest, you filed the 1113, correct?

7 A. We did file the 1113.

8 Q. And you did not understand that would be  
9 an impediment to continued negotiations of the  
10 good faith character you had sought to achieve  
11 by withdrawing the proposal on December 19th,  
12 correct?

13 A. I understood that the union had indicated  
14 -- UAW had indicated their view is an 1113  
15 filing would be a complication or difficulty  
16 with bargaining.

17 MR. SIMON: No further questions.

18 THE COURT: Let me follow up on that  
19 because I think you said a couple of times  
20 that it was the company's hope, both when it  
21 adopted the two-step, or even when there's a  
22 three-step approach, that notwithstanding the  
23 risk that there would be lost momentum after  
24 each step, that it would lead to a  
25 constructive solution of the whole problem.

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: And I think you also  
3 said that the company intended and, I believe,  
4 also made it clear to the UAW that if it  
5 received sufficient indications of interest or

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6 signs or the like, after March 22nd and before  
7 the March 31st deadline, it would consider  
8 extending the deadline?

9 THE WITNESS: That's correct, Your  
10 Honor.

11 THE COURT: Had there been any  
12 communication to the UAW as to what sort of  
13 signals you had in mind?

14 THE WITNESS: We had had discussion  
15 -- I would call it informal discussion but  
16 discussion where we asked whether we would  
17 receive a counterproposal to our proposal out  
18 there that would provide a framework to  
19 resolve our issues or work our issues  
20 comprehensively.

21 THE COURT: So you were looking for  
22 some form of response?

23 THE WITNESS: Yes. On a more  
24 comprehensive basis.

25 THE COURT: And what about the

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1 notion of doing this in the process where the  
2 footprint would be next and then the wages and  
3 working conditions?

4 THE WITNESS: It -- I -- that, in  
5 terms of trying to tackle the complexity of  
6 this issue, seemed like a manageable way to  
7 break the issues down and deal with them but  
8 was not a substitute for some kind of more  
9 comprehensive framework. It was open-ended,  
10 if you will.

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11                 THE COURT: Did you get at least a  
12 response in respect of the footprint issue?

13                 THE WITNESS: Not that one that  
14 would suggest that we would make significant  
15 progress on that issue.

16                 THE COURT: Did you get any sort of  
17 indication of a timetable to work both, the  
18 footprint and the wages, working conditions,  
19 flexibility, jobs bank?

20                 THE WITNESS: No, we did not, Your  
21 Honor.

22                 THE COURT: Did you ask for one?

23                 THE WITNESS: We did ask for whether  
24 we could use the time to either construct a  
25 framework, be it counterproposal or framework,

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1 prior to the end of the month, the 31st  
2 deadline we had out there. And we did not  
3 receive anything specific.

4                 THE COURT: Now by that, do you mean  
5 you asked for a proposal as to certain  
6 deadlines that the parties would hold  
7 themselves to for a process to get to an  
8 agreement?

9                 THE WITNESS: We -- I don't recall  
10 asking for a specific timetable but rather,  
11 would we get a proposal or some kind of  
12 indication that we could use to indicate that  
13 there was going to be constructive and  
14 substantial progress.

15                 THE COURT: And when was that

16 sought? Was that sought before the 22nd?  
17 THE WITNESS: As I recall, that  
18 dialogue took place throughout the process and  
19 then was brought it sharper focus after the  
20 22nd. And, as I recall, we did raise the  
21 issue that, while it was not a preferred  
22 approach, if what was necessary was to bargain  
23 exclusively with the UAW and then take the  
24 result and resolution cost to General Motors,  
25 we were prepared to do that.

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1 THE COURT: All right. And was that  
2 -- when you say, you know, up -- before and  
3 along the 22nd, were there any indications the  
4 company was still looking for that type of  
5 approach -- a response even after it put the  
6 March 24th proposal on the table?

7 THE WITNESS: I believe -- I believe  
8 that's correct, Your Honor. I think that's a  
9 fair characterization. We were looking for a  
10 response on how to resolve this issue  
11 comprehensibly and we continued to seek that.

12 THE COURT: Did the UAW tell the  
13 company, before the company made that March  
14 24th proposal, that if it did so, that would  
15 preclude it getting in response some form of  
16 counterproposal or --

17 THE WITNESS: Not that I recall.

18 THE COURT: Okay. Let me turn  
19 briefly to another topic that you discussed  
20 because I'm not quite sure I understood this.

21 I think Mr. Kennedy was asking you and a  
22 number of other counsel for the different  
23 unions asked you also about specific cost  
24 savings.

25 THE WITNESS: Yes, Your Honor.

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1 THE COURT: And your response has  
2 consistently been that the company's proposals  
3 are not based on specific cost savings but  
4 more on the ?? (12630) of generic agreements  
5 that affect competition adversely.

6 THE WITNESS: Yes. That our  
7 proposals, Your Honor, were based on what our  
8 competitors -- their labor arrangements have  
9 as we compete for work.

10 THE COURT: All right. But then I  
11 think -- at least I had that in my notes, that  
12 you said that the unions, at least those that  
13 had financial advisors, could model specific  
14 savings under various scenarios, based on the  
15 information the company had given you?

16 THE WITNESS: It -- I think -- what  
17 I was trying to indicate, Your Honor, is that  
18 there were models passed and the unions,  
19 through both their bargaining experience and  
20 with their advisors, could model the impact  
21 which, depending on assumptions could gen up  
22 savings.

23 THE COURT: All right. Well, my  
24 question is when you say models were passed,  
25 has the company developed a financial model

1 that it has shared with the unions?

2 THE WITNESS: It's my understanding  
3 that the company, and along with Rothschild,  
4 has passed models that model the steady state  
5 as well as the impact of the competitive  
6 benchmark.

7 THE COURT: And it's your view that  
8 if you, in a negotiation with the union,  
9 wanted to show the affect of savings, in  
10 connection with a particular provision under  
11 various scenarios, depending on, for example,  
12 the income the company was making in that  
13 plant or that ?? (12822) was losing in that  
14 plant, that you would be able to go to this  
15 model and instruct Rothschild to run that  
16 assumption so you could come up with a  
17 hypothetical based on a projection and see as  
18 particular savings?

19 THE WITNESS: I don't think the  
20 model would operate at the plant level, Your  
21 Honor. I think it's a broader model. But  
22 through assumptions on the penny sheets, on  
23 how we model wage and benefits, that it could  
24 be ascertained -- the impact, if you will.  
25 Depending on the wage rate and benefit loan

1 versus how many employees that are assumed, if

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2 you will. That are assumed.

3 THE COURT: So the modeling is under  
4 divisional level? Or, how does it --

5 THE WITNESS: I believe the modeling  
6 is broadly at a corporate level.

7 THE COURT: Corporate level.

8 THE WITNESS: And we have provided  
9 now some plant level. We retained a firm back  
10 in December to provide some plant level and  
11 that information has just recently been  
12 flowing.

13 THE COURT: Is that in the form of a  
14 model also or is that something that they  
15 would have to make their own models out of?

16 THE WITNESS: I am uncertain as I  
17 sit here, Your Honor, whether that's an  
18 interactive model.

19 THE COURT: In negotiating other --  
20 in past negotiations that you've been involved  
21 in where the company is asked for concessions  
22 with respect to -- as I gather, at least at  
23 the plant level that has occurred with some of  
24 the unions.

25 THE WITNESS: Yes.

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1 THE COURT: Had those negotiations  
2 turned on specific cost savings or have they  
3 been more generic as far as the give and take  
4 between the union and the company?

5 THE WITNESS: They've been -- they  
6 have been somewhat more generic but in some

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7 instances, for example, we have targeted  
8 competitive cost levels to try to win bids.  
9 We've interacted with the unions to say this  
10 is the labor cost level. We concurrently see  
11 that we'll be required to be competitive and  
12 win these bids. So, we actually have a  
13 combination of interactions like that.

14 THE COURT: Does the company have  
15 the data to do that type of negotiation if  
16 that's where a particular union wants to go in  
17 the study? At least to show them that it's --  
18 that the company's proposal is just --  
19 actually, foots out --

20 THE WITNESS: I think we have, with  
21 the plant level analysis that's been done and  
22 with penny sheets that we've had against  
23 competitive practice, I think the factors are  
24 available broadly.

25 THE COURT: And -- I'm not sure I

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1 heard you. Is that -- when was that provided  
2 to the unions?

3 THE WITNESS: I think the plant  
4 level data went just recently within the last  
5 ten days, I believe.

6 THE COURT: And the penny sheets? I  
7 think I remember in the affidavits, but --

8 THE WITNESS: Penny sheets were made  
9 available, I think, in November and, again,  
10 we've had a history of using penny sheets.  
11 Our unions are quite familiar with those.

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12 THE COURT: Okay. All right. Does  
13 anyone want to ask any questions on those  
14 questions that I just asked?

15 MR. PETERSON: Your Honor, just one  
16 thing.

17 FURTHER CROSS-EXAMINATION OF

18 MR. PETERSON:

19 Q. I think it's clear but this sort of  
20 reading of end trails about what sign you  
21 needed from the UAW and so forth to avoid  
22 filing your 1113, it had nothing to do with  
23 the Steelworkers? You weren't looking for any  
24 sign or wiggle or response from the  
25 Steelworkers? This was a UAW-based thing,

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1 right?

2 A. The specific discussion I referenced for  
3 the UAW. We were ardently hopeful of  
4 counterproposals or some significant  
5 indication from any of the unions.

6 Q. And then you wouldn't have filed it?

7 A. It would have been a consideration.

8 MS. ROBBINS: Just a similar  
9 question, Your Honor, on ??(13219).

10 THE COURT: Well, my question just  
11 weren't to the UAW. Were you looking for  
12 indications or signs of whatever I was asking  
13 you about from anyone other than the UAW at  
14 that time?

15 THE WITNESS: We were hopeful of  
16 signs from any union. We, of course, through

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17 the three-way bargaining, had highest focus on  
18 the UAW, Your Honor.

19 THE COURT: Okay. And you hadn't  
20 specifically gone to any of the other unions  
21 and said we want --

22 THE WITNESS: As I recall --

23 THE COURT: We want a time frame or  
24 schedule or, you know, a framework for  
25 bargaining or anything like that?

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1 THE WITNESS: I believe we had  
2 conversation with the IUE who had indicated  
3 that a counterproposal asking whether we would  
4 receive that. And beyond that, I don't recall  
5 specific discussions with the other unions.

6 THE COURT: Okay.

7 MR. BUTLER: I'm sorry. You have  
8 more recross?

9 MR. FOX: Yeah.

10 THE COURT: I just don't remember  
11 Mr. Butler asking any questions of your issue  
12 but go ahead.

13 MR. FOX: He did.

14 THE COURT: Okay. All right. It  
15 obviously had an impact, right?

16 MR. FOX: Well, on me, at least.

17 FURTHER CROSS-EXAMINATION OF

18 MR. FOX:

19 Q. Mr. Butler, you indicated in the redirect  
20 by your counsel, Mr. Butler, some reasons why  
21 you thought it would be beneficial to deal

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22 with the labor issues now rather than waiting  
23 till the fall of 2007 to do that. Do you  
24 remember that testimony?  
25 A. I do.

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1 Q. And one of those reasons was that if you  
2 reach agreement or cut back on the benefits  
3 now, that the unions, or at least some of the  
4 unions, have the benefit of benefit guarantees  
5 that they've obtained from General Motors,  
6 correct?

7 A. Some of the unions do, that's true.

8 Q. Okay. And the unions that have that, I  
9 believe, are the UAW, the Steelworkers and, I  
10 think, the IUE, is that right?

11 A. That's my understanding.

12 Q. And if you waited until 2007 when those  
13 benefit guarantees go away, then there would  
14 be, in effect, less of a soft landing once  
15 those benefit guarantees are gone than there  
16 is today with them in existence, correct?

17 A. On the assumption that the benefit  
18 guarantees would go away. It's unclear to me  
19 whether they do or not.

20 Q. Well, assuming they -- you're assuming  
21 they expire in 2007, as presently drafted,  
22 correct?

23 A. On the assumption that they are not  
24 extended through negotiation then I think it's  
25 reasonable to say that they would not be there

1 as a soft landing.

2 Q. All right. Well, but as they stand  
3 today, they expire in 2007, correct?

4 A. As do many of our agreements, yes.

5 Q. Okay. Now, there is also an agreement  
6 between Delphi and General Motors by which  
7 Delphi indemnifies General Motors to the  
8 extent General Motors pays on the guarantee --  
9 the benefits guarantees, correct?

10 A. It's my understanding there is a  
11 commercial agreement or covenant between  
12 Delphi and General Motors as relates to the  
13 benefit guarantees for the UAW.

14 Q. Does that mean the answer to my question  
15 is yes?

16 A. I was narrowing it because I am not aware  
17 of that commercial arrangement for the IUE and  
18 the Steelworkers.

19 Q. Take a look, if you would, at Exhibit 75,  
20 please.

21 A. Allow me to arrange the books. I have  
22 it.

23 Q. Okay. And within Exhibit 75, there are,  
24 I guess, the two agreements. Exhibit -- the  
25 agreement that's marked Exhibit 99.1 is the

1 indemnification agreement by Delphi  
2 Corporation of General Motors in the event  
3 General Motors pays on the UAW benefit

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4 guarantee, correct?

5 A. I believe that's true.

6 Q. Okay. And although this agreement says  
7 that it's -- the Delphi party is Delphi  
8 Automotive Systems Corporation, I think we've  
9 previously established that that was  
10 previously the name of Delphi Corporation.

11 Are you aware of that?

12 A. I believe that's the case.

13 Q. Okay. So, by entering into -- or by  
14 having the unions take account or use the  
15 benefit -- or take advantage of the benefit  
16 guarantees today, the cost of the benefit  
17 guarantee, at least with respect to the UAW  
18 comes back as a liability against Delphi  
19 Corporation. Whereas, if you waited until  
20 these agreements expired in 2007, that  
21 liability would not come back to Delphi  
22 Corporation, correct?

23 A. On those assumptions, that could be true.

24 Q. Could be true or is true?

25 A. I -- I'm -- I'm not authoritative on the

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1 operation of this and liabilities and claims,  
2 but if the benefit guarantee is assumed to  
3 expire, then I believe what you're saying is  
4 true.

5 MR. FOX: Thank you, Mr. Butler.

6 MR. BUTLER: I have no further  
7 direct, Your Honor.

8 THE COURT: All right. You can step

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9 down, Mr. Butler.

10 THE WITNESS: Thank you, Your Honor.

11 MR. BUTLER: Your Honor, before  
12 proceeding with the next witness, does it make  
13 sense to take the afternoon break or do you  
14 want to keep going?

15 THE COURT: Oh, there's an afternoon  
16 break?

17 MR. BUTLER: I was put up to it by a  
18 few people but if not, Your Honor --

19 THE COURT: You know, I'm going to  
20 check on the air conditioning again. So, a  
21 ten minute break would be fine.

22 MR. BUTLER: Yes, yes.

23 (Recess from 3:55 P.M. to 4:14 P.M.)

24 THE COURT: Please be seated. All  
25 right, back on the record on Delphi.

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1 BY MR. DECHIARA: Your Honor,  
2 continuing with the debtors' case in chief,  
3 I'd like to ask Dr. Michael L. Wachter to the  
4 stand to be cross examined in connection with  
5 his declarations which are Exhibits 16 and 17  
6 which I move into evidence.

7 BY MR. BUTLER: And, Your Honor, the  
8 order of cross examination will be UAW, IUE,  
9 Steelworkers, IBEW and Operating Engineers.

10 THE COURT: Okay.

11 MR. BAUMSTEIN: And, Your Honor,  
12 very briefly, again Doug Baumstein on behalf  
13 of shareholders. I know this issue had been

14 addressed in the meet and confer specifically  
15 with respect to Professor Wachter and his  
16 testimony. It is was our position that Mr.  
17 Wachter is purporting to offer expert  
18 testimony that goes to their order of proof  
19 and goes to issues of comparability. We  
20 believe those issues go to the type of relief  
21 that's appropriate here, and whether what is  
22 being sought is likely to either be good  
23 enough to either satisfy the unions or  
24 alternatively push them toward -- even more  
25 toward a strike and goes to -- ultimately to

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1 the business judgment of the debtors. I would  
2 also note that -- I know you have ruled on  
3 this issue before, at least at the meet and  
4 confer that, with respect to the meet and  
5 confer process between the unions and the  
6 debtors that, allowing Appaloosa to have this  
7 deposition would interfere with that. I just  
8 note for the record that Appaloosa did not  
9 participate, was not invited and was not even  
10 aware of that meet and confer at the time it  
11 happened. So we re-raise our application with  
12 respect to Professor Wachter.

13 THE COURT: Okay, well first,  
14 basically for the same the reasons up, I'll  
15 deny it. Base on my review of Mr. Wachter's  
16 declarations. I think his being offered up by  
17 the debtors here really goes to the 1113  
18 issues primarily as opposed to business

19 judgment at to whether to, at this time seek  
20 to reject if, if there's no agreement. So,  
21 again, given that peripheral tie to the  
22 shareholder's issue and the agreements worked  
23 out between the main litigants here. I don't  
24 think it's a fair result that you didn't get a  
25 separate deposition on him.

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1 MR.BAUMSTEIN: Thank you, Your  
2 Honor.

3 (The witness is sworn.)

4 THE COURT: For the record, would  
5 you spell you name?

6 THE WITNESS: Michael Wachter.

7 Michael: M-I-C-H-A-E-L, W-A-C-H-T-E-R.

8 THE COURT: Do you want to shut  
9 this?

10 MR. DECHIARA: Good afternoon, Your  
11 Honor, Peter Dechiara from the law firm of  
12 Cohen Weiss and Simon for the UAW. Good  
13 afternoon Mr. Wachter.

14 THE WITNESS: Good afternoon.

15 CROSS-EXAMINATION BY

16 MR. DECHIARA:

17 Q. Mr. Wachter, your analysis in this  
18 case is based on the principle of  
19 comparability, is that correct?

20 A. Yes, it is.

21 Q. And comparability is the principle  
22 of labor economics in which the economists  
23 compares the pan benefits of a group of

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24 workers under study to a group of similarly  
25 situated workers, is that correct?

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1 A. Yes, that's correct.

2 Q. Okay. And this is not the first  
3 time that you have done a comparability study,  
4 correct?

5 A. That's correct.

6 Q. Okay. And in fact, in your  
7 declaration in this case which is Joint  
8 Exhibit 16, do you have that in front of you?

9 A. Yes, I do.

10 Q. In paragraph one you indicate that  
11 you have appeared on several occasions in  
12 interest arbitrations between the United  
13 States' Postal Service or on behalf of the  
14 United States' Postal Service is that correct?

15 A. Yes.

16 Q. Just so we all understand what an  
17 interest arbitration is, tell me if this is a  
18 fair description. An interest arbitration is  
19 an arbitration proceeding typically held in,  
20 or -- between public sector employers and  
21 public sector unions where the parties are  
22 unable to reach the terms of a new contract  
23 and they choose a neutral party to -- an  
24 arbitrator, to determine that the terms,  
25 including the wages and benefits of the new

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1 contract. Is that a fair description of your  
2 understanding of interest arbitration?

3 A. It's certainly much more used in the  
4 public sector than it is in the private  
5 sector.

6 Q. Okay, but my general description of  
7 what an interest arbitration was accurate.

8 A. Roughly, yes.

9 Q. Okay. And the reason that the  
10 United States' Postal Service has interest  
11 arbitrations with its unions is because the  
12 unions in the public sector, including postal  
13 union workers are prohibited from striking and  
14 from using self-help, correct?

15 A. That's one of the reasons. The  
16 other reason is that there's a pay  
17 comparability statute, asking the Postal  
18 Service to pay comparable wages.

19 Q. Okay, so in a postal service  
20 interest arbitration, use of comparability  
21 analysis is mandated by law, correct?

22 A. I like to think so, yes.

23 Q. Okay. Let me show you a provision  
24 of the United States' Code, it's 39 U.S.C.  
25 Section 1003 and I'll represent to you it's a

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1 provision from the Postal Reorganization Act  
2 which is the statute that governs the postal  
3 service.

4 MR. DECHIARA: Your Honor, if I may

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5 approach the witness?

6 THE COURT: Yes.

7 BY MR. DECHIARA:

8 Q. Mr. Wachter, let me direct your  
9 attention to Section 1003 and in particular  
10 let me read to you the second sentence of that  
11 provision. It says: "it shall be the policy  
12 of the postal service to maintain compensation  
13 and benefits for all officers and employees on  
14 a standard of comparability to the  
15 compensation and benefits paid for, paid for  
16 comparable levels of work in the private  
17 sector of the economy." Are you familiar with  
18 that provision?

19 A. Yes, I am.

20 Q. And that's what you were referring  
21 to when you said that comparability analysis  
22 is mandated by statute in such an interest  
23 arbitration?

24 A. Yes.

25 Q. Okay. Do you recall an interest

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1 arbitration between the United States' Postal  
2 Service and the National Association of Letter  
3 Carriers that you participated in, in the  
4 summer of 1999?

5 A. Yes.

6 Q. Okay. And did you present a  
7 comparability analysis on behalf of the postal  
8 service in that interest arbitration?

9 A. Yes, I did.

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10 Q. And in your comparability analysis  
11 in that case, you -- very similar to what you  
12 do here -- made the argument that letter  
13 carriers enjoy a pay premium because their  
14 wages and benefits are above the pay and  
15 benefits of the average similarly skilled  
16 worker throughout the private sector economy  
17 of the United States. Do you recall making  
18 that presentation?

19 A. Yes.

20 Q. Okay. And you also argued, did you  
21 not, that further evidence of the paid premium  
22 enjoyed by letter carriers is their low quit-  
23 rate, correct?

24 A. That's correct.

25 Q. Okay. And the National Association

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1 of Letter Carriers in that arbitration argued  
2 that your comparability analysis was flawed,  
3 isn't that right?

4 A. That is what they argued.

5 Q. And, among other things they argued  
6 that one must look at comparably sized firms  
7 that comparing the workers in the United  
8 States' Postal Service, one should also look  
9 at control for other large firms in the  
10 economy, correct?

11 A. Yes, they tried to get arguments  
12 that would make the premium smaller or go  
13 away.

14 Q. Do you remember who won that

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15 arbitration?

16 A. Depends on what you mean by won.

17 Q. Well, may I ask you, did the  
18 arbitrator hold that the wages and benefits of  
19 the letter carriers, pursuant to the statute,  
20 should be reduced to the average wage of  
21 similarly skilled workers throughout the  
22 United States' economy?

23 A. The award in that case was geared to  
24 the differential between the letter carriers  
25 and the clerks and in that case -- and I will

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1 say in part because the postal service was  
2 also having more trouble recruiting and  
3 retaining letter carriers at that time -- that  
4 the award was simply an adjustment between the  
5 letter carriers and the clerks. I think, as  
6 you know, a series of arbitrators, beginning  
7 in 1984, held that there were discrepancies in  
8 pay comparability in the premium -- wage  
9 premiums were at 20 percent and the  
10 compensation was about 30-40 percent.

11 Q. Let me tell you what I mean by who  
12 won. In that arbitration there had  
13 historically been a parity between the clerks  
14 and the letter carriers. In that arbitration  
15 the letter carriers argued that they should  
16 break parity, that they should be paid more  
17 than the clerks and they prevailed, did they  
18 not?

19 A. That's correct and the --

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20 Q. Okay, and then you answered my  
21 question. And now let me ask you a more  
22 particular question. The arbitrator did not  
23 hold that pursuant to your comparability  
24 analysis, pursuant to the statute that  
25 mandates comparability that that paid premium

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1 that you said the letter carriers should enjoy  
2 should be eliminated, correct.

3 A. What I said before that --

4 Q. Could you answer my question? Did  
5 the arbitrator hold that the letter carriers'  
6 pay should be reduced to the national average?

7 A. What the arbitrator held was that  
8 there should be a pay differential between the  
9 letter carriers and the clerks

10 Q. Can you answer my question now?

11 A. That's what he held.

12 Q. Did he hold -- okay, I take it from  
13 your answer that he did not hold that the pay  
14 premium for the letter carriers should be  
15 reduced to the national average?

16 A. He did not address that issue.

17 Q. Okay, and to your knowledge, to this  
18 day, no arbitrator has reduced, pursuant to  
19 this statute that I've shown you, the pay  
20 premium enjoyed by letter carriers, correct?

21 A. Since then?

22 Q. Yes, to the U.S. average. Do you  
23 have any knowledge of such an award?

24 A. When was that arbitration?

25 Q. 1999.

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1 A. They reduced the differential  
2 between clerks and carriers, correct?

3 Q. No, no. That's not my question.

4 Since 1999 you're not aware of any arbitration  
5 award that reduced the pay and benefits of  
6 letter carriers to the national average in the  
7 private sector for similarly-skilled workers.

8 A. Could you remind me, because I don't  
9 recall when the last set of arbitrations were.  
10 Have there been arbitrations since --

11 Q. I'm just asking you if you have any  
12 knowledge of any arbitration since 1999 that  
13 did that. If you do, you do, if you don't,  
14 you don't.

15 A. That was the one and only  
16 arbitration that the letter carriers or any of  
17 the unions prevailed on the issue of pay  
18 comparability and then only to the extent of  
19 establishing a differential between clerks and  
20 carriers.

21 Q. Can I take it your answer is no?

22 A. Depends on what your question is.

23 MR. DECHIARA: Can the court  
24 reporter read back my question?

25 THE REPORTER: "Do you have any

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1 knowledge of any arbitration since 1999 that

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2 did that. If you do, you do, if you don't,  
3 you don't."

4 MR. DECHIARA: I guess the one  
5 before that.

6 THE REPORTER: "Since 1999 you're  
7 not aware of any arbitration award that will  
8 reduce the pay and benefits of letter carriers  
9 to the national average in the private sector  
10 for similarly-skilled workers?"

11 THE WITNESS: I haven't but I would  
12 like to --

13 BY MR. DECHIARA:

14 Q. You have not? Thank you.

15 A. I have not but if I could explain.

16 Q. You've answered my question. Let me  
17 refer you to your supplemental declaration  
18 which is Exhibit 17 and ask if you if you  
19 could turn to paragraph 30 of that, it appears  
20 on page 11. Let me read you the second  
21 sentence of paragraph 30, you say quote: we  
22 agree entirely that the comparability standard  
23 has applicability in arbitration, but it also  
24 has equal relevance to a Section 1113(c)  
25 bankruptcy hearing. Indeed the comparability

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1 standard was the basis for my testimony in  
2 United Airlines and Tower Automotive  
3 bankruptcy hearings, end quote. Do you see  
4 that?

5 A. Yes, I do.

6 Q. Okay. Now that first sentence,

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7 where you assert that comparability standard  
8 has equal relevance to a section 1113(c)  
9 bankruptcy hearing. That's a legal  
10 conclusion, is it not?

11 A. I was giving an economic  
12 interpretation.

13 Q. Okay. Do you have any expertise in  
14 bankruptcy law?

15 A. I am not a lawyer.

16 Q. Are you're not appearing here today  
17 as a legal expert?

18 A. That's correct.

19 Q. Or a bankruptcy law expert?

20 A. That's correct.

21 Q. Okay. You point to your testimony  
22 in United Airlines and Tower Automotive and in  
23 those cases you presented comparability  
24 analyses on behalf of those employers?

25 A. Correct.

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1 Q. Okay, in fact, there was never a  
2 decision rendered in either the United case or  
3 the Tower case, correct?

4 A. There is very little doubt that in  
5 the United case the parties are agreeing to  
6 reestablish the airline on more competitive  
7 terms.

8 Q. That wasn't my question

9 THE COURT: You should try to answer  
10 his question.

11 BY MR. DECHIARA:

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12 Q. There was no decision rendered on  
13 the employer's 1113 motion in either the  
14 United case or the Tower case, correct?

15 A. I don't know, as a matter of fact.

16 Q. Okay, so you're not aware of any --  
17 then it's safe to say that you're not aware of  
18 any court decision finding that your testimony  
19 in those cases had any relevance to the  
20 Section 1113 standard, correct?

21 A. I have not followed any of the  
22 decisions that have come down after I've  
23 testified.

24 Q. Okay, you also failed to mention  
25 that you were hired to perform a comparability

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1 analysis on behalf of Delta Airlines, for its  
2 Section 1113 proceeding. You were hired to do  
3 that for Delta, were you not?

4 A. Correct.

5 Q. And are you aware that there was a  
6 Section 1113 proceeding in the Delta case?

7 A. Yes.

8 Q. And after Delta received your  
9 comparability analysis they decided not even  
10 to put you on the witness stand, is that  
11 correct?

12 A. I was in the hospital at the time.

13 Q. They made your colleague, who helped  
14 you out on your report available?

15 A. Excuse me?

16 Q. You had a colleague who worked with

17 you on the report?

18 A. Correct.

19 Q. What was his name?

20 A. Jim Galula

21 Q. And Dr. Galula was made available to  
22 testify in your stead?

23 A. I was in the hospital.

24 Q. You had no idea what was going on?

25 A. At the time I didn't.

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1 Q. Okay. Do you know that in the  
2 spring of this year, in fact, quite recently  
3 in the last couple of months there was --that  
4 was in the fall of '05 that you were in the  
5 hospital?

6 A. That is correct.

7 Q. Okay. Are you aware that Delta  
8 originally had a section 1113 hearing in this  
9 court which was aborted when the parties  
10 reached an interim agreement but then, due to  
11 their failure to reach a comprehensive  
12 agreement they had a full blown Section 1113  
13 hearing that went to completion just within  
14 the last couple of months, were you aware of  
15 that?

16 A. I did not follow that, no.

17 Q. Okay. No one contacted you to  
18 testify at that hearing did they?

19 A. That's correct.

20 Q. Okay. Your central finding here is  
21 that most of Delphi's unionized workers

22 receive a premium above the average pay in the  
23 United States' economy for workers who work in  
24 the same BLS occupational categories, correct?  
25 A. Yes.

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1 Q. And BLS, the Bureau of Labor  
2 Statistics?  
3 A. Yes.  
4 Q. Okay. By the way, Bureau of Labor  
5 Statistics -- statistics are generally used by  
6 labor economists, are they not?  
7 A. Yes.  
8 Q. They're publicly available?  
9 A. Yes.  
10 Q. They're seen as reliable?  
11 A. Yes.  
12 Q. They're comprehensive?  
13 A. That's a more difficult question.  
14 Q. Okay, but they're generally seen as  
15 reliable standard  
16 A. Yes.  
17 Q. And authoritative?  
18 A. Yes.  
19 Q. Now everything else being equal if  
20 one company's workers are more productive than  
21 average, that company can afford to pay a  
22 premium, can it not?  
23 A. Can you tell me more what you mean  
24 by productive?  
25 Q. Let's say you have a perfectly

1 competitive market in the production of  
2 widgets. You have two companies. Everything  
3 about them is identical except one has workers  
4 who can produce ten widgets an hour and one  
5 has workers that can produce two widgets an  
6 hour. The one that has the workers that can  
7 produce ten widgets an hour can afford to pay  
8 a premium, can it not?

9 A. In that differential is driven by  
10 differences in the skill of the workers --

11 Q. What's that?

12 A. Excuse me. Is the differential  
13 driven entirely by what you're calling the  
14 skill of the workers as distinct from --?

15 Q. Well, we'll get into why there may  
16 be differentials in productivity. But I want  
17 to limit my hypothetical just -- all we know  
18 is that one has workers that can spit out ten  
19 widgets and hour and the other one has workers  
20 that can spit out two widgets an hour. And  
21 we'll talk in a minute about why those  
22 differences might exist.

23 A. It's very difficult to answer that  
24 question without knowing more about your  
25 hypothetical.

1 Q. You cannot testify for me that the  
2 company that is producing, that has workers

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3 that are producing ten widgets an hour, and  
4 presumably selling them, because it's a  
5 perfectly competitive market, and producing  
6 more revenue cannot pay its workers a premium?

7 A. The hypothetical you've given me is,  
8 at this point, incomplete. So there are  
9 different factors depending upon what your  
10 hypothetical is that could lead to different  
11 answers.

12 Q. In what way is it incomplete?

13 A. Lots of ways. I need to know about  
14 the nature of the product market, I need to  
15 know about the nature of the capital  
16 equipment.

17 Q. Let's say the product market --  
18 unlimited demand for widgets. They all sell  
19 for the same price, you produce them, someone  
20 buys them.

21 A. In a perfectly competitive market?

22 Q. Right.

23 A. These people are just working  
24 harder?

25 Q. Excuse me?

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1 A. They're working harder? Can you  
2 tell me -- do I know what --

3 Q. Let's say they work harder, yes,  
4 they work harder.

5 A. They are working sort of, faster?

6 Q. Okay, well let's move on, we'll come  
7 back to this. There are different reasons why

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8 certain workers in the economy are more

9 productive than others, correct?

10 A. Surely.

11 Q. And one of those reasons is because

12 they use equipment that allows them to be more

13 productive. For example they may use bigger

14 machines, more sophisticated machines, more

15 automated machines, correct?

16 A. That's certainly the case.

17 Q. Okay. And another reason workers

18 may be more productive is that they may have

19 more aptitude, they may be better at the job;

20 they may work harder, correct?

21 A. There are lots of reasons.

22 Q. Well those are some reasons?

23 A. That is some of the reasons.

24 Q. They may be more experienced, they

25 may know how to do it better because of having

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1 done it before, correct?

2 A. If there were facts to establish

3 that, it could be recent --

4 Q. Well, I'm speaking in general terms.

5 Am I correct that those are factors that could

6 lead to greater productivity?

7 A. Well, I said, yes.

8 Q. Yes, okay. They could be better

9 trained?

10 A. You have to give me more of the

11 hypothetical again.

12 Q. well, I'm trying to isolate factors

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13 that make some workers in the economy more  
14 productive than others. We've established  
15 that using machinery or equipment can do that.  
16 We've established, I believe, that people can  
17 work harder, they can have better aptitude,  
18 you said they can have more experience and now  
19 I'm asking you about training. They can be  
20 trained to do the job better and that would  
21 make them more productive, everything else  
22 equal, correct?

23 A. Yes. And some of that --

24 Q. Well, you answered my question.

25 A. I was trying to.

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1 Q. Well, you already did.

2 A. I had half of a sentence; I don't  
3 know how I could have answered the question.

4 Q. Complete your sentence.

5 A. If a worker was, you're giving me  
6 very incomplete hypotheticals and this is  
7 another one. If workers are trained at a cost  
8 to the employer, sometimes at least a part of  
9 that gain is recouped by the employer.

10 Q. Okay. So now going back to my  
11 original question. The hypothetical with the  
12 widgets. Let's say the workers that can  
13 produce ten widgets an hour as opposed to two  
14 widgets an hour do so because they have --  
15 they're using machines that can shoot out  
16 widgets more efficiently. Everything else  
17 equal, that employer can pay a premium.

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18 A. It is as incomplete now as it was  
19 before. I need to know if that is because the  
20 workers are working faster, if the machinery  
21 is, in itself, more productive and if the  
22 workers are working faster then yes, you would  
23 be able to pay them more.

24 Q. Let me refer you to page 13 of your  
25 supplemental declaration, paragraph 34. Are

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1 you there?

2 A. Yes.

3 Q. Okay. Let me refer you to the  
4 beginning of the third sentence. I'm not  
5 going to complete it I'm just going to read  
6 the first few words, but feel free to read as  
7 much of it as you want. It says, quote, wages  
8 do rise with respect to experience and  
9 productivity. And the sentence goes on but  
10 I'm going to finish the quote there. That's  
11 true, is it not, what I just read?

12 A. Yes.

13 Q. Now, is it also a generally observed  
14 economic fact that companies that produced  
15 high valued products tend to pay their workers  
16 more than companies that pay low value  
17 products. For example, companies that produce  
18 jet planes tend to pay their workers more than  
19 companies that produce broomsticks?

20 A. Well, in your example is because you  
21 deal with Boeing and that is a unionized  
22 company.

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23 Q. Well I wasn't going to say with

24 Boeing but --

25 A. I, what undercuts your argument

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1 significantly is that the people who are in  
2 the computer industry who have worked and  
3 produced computers, let's say Hewlett Packard  
4 computers. The value of what they have  
5 produced has increased significantly and, you  
6 know, made some companies very wealthy. And  
7 as long as the skill of those workers is  
8 replaceable in the labor market, what happens  
9 is that the price of the product falls and  
10 your return does not accrue to the workers.

11 Q. Mr. Wachter, I asked you a question.  
12 If you could try to answer my question. As an  
13 empirical matter, as a labor economist, have  
14 you observed or is it generally observed that  
15 companies that produce high value products --  
16 and I'm not saying that this is always the  
17 case and there may be exceptions, but is it a  
18 general rule that companies that produce high  
19 value products pay their workers more than  
20 companies that produce low value products.

21 A. Well, since my statement was not  
22 just an, you know, an idle hypothetical, the  
23 answer is no.

24 Q. Okay. There are some cases in which  
25 an employer would want to pay a wage premium

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1 to its employees, purely for business reasons,  
2 to maximize profits. Isn't that the case?

3 A. Yes.

4 Q. Okay. And, in fact an example, a  
5 famous example, I think you refer to it in  
6 your papers was in 1914 Henry Ford doubled the  
7 wages of his workers, completely voluntarily.

8 Is that correct, is that your understanding?

9 A. That's correct.

10 Q. Okay and at that time the auto  
11 industry which was in its nascent stage at the  
12 beginning of the 20th Century, was very  
13 competitive, there were a lot of start-ups,  
14 correct?

15 A. That's correct.

16 Q. That proved to be a very shrewd move  
17 by Mr. Ford, did it not?

18 A. Yes, it did.

19 Q. And Ford went on to be one of the  
20 paragons of an industrial company in the 20th  
21 Century, correct?

22 A. Paragons is in the eyes of the  
23 beholder.

24 Q. It became a major industrial  
25 company?

1 A. I thought you were talking about  
2 Henry Ford.

3 Q. No, I'm not talking about Henry  
4 Ford. There's plenty of things about Henry

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5 Ford's personality that I can take issue with.

6 I'm talking about his company.

7 A. His company did very well for --

8 Q. For many years.

9 A. For many years.

10 Q. Okay. Now, do you have any  
11 particular expertise in the auto industry or  
12 in the auto parts industry?

13 A. Not more specifically to other  
14 industries which I've studied since 1965, so I  
15 guess that's 40 years.

16 Q. Well, have you published any studies  
17 particularly in the auto industry?

18 A. No, but I've published studies where  
19 auto industry data were included.

20 Q. Well, you've published studies where  
21 you look at the entire U.S. economy, have you  
22 not?

23 A. Yes, in some manufac -- you sort of  
24 have to know what the data mean before you can  
25 publish.

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1 Q. It would be fair to say that you  
2 have no specialty in the auto industry or in  
3 the auto parts industry, correct?

4 A. If you want to interpret -- given my  
5 answer, if you want me to say no I'd be  
6 pleased to do so.

7 Q. I don't want you to say no or yes.  
8 I want you to answer honestly. Is it fair to  
9 say that you do not have a specialty in the

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10 auto industry or in the auto parts industry?

11 A. A specialty?

12 Q. Yes.

13 A. A specialty, no.

14 Q. Thank you. In your preparation of  
15 your expert report for your testimony here  
16 today, did you visit any Delphi facility to  
17 see how the workers there actually view their  
18 work?

19 A. No, I did not.

20 Q. Did you visit the facilities of any  
21 of Delphi's competitors to see how the workers  
22 there do their work?

23 A. No.

24 Q. Did you make any empirical  
25 observations at all, as opposed to reviewing

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1 published -- reviewing data?

2 A. I've certainly known for a long  
3 what's been going on in the automobile  
4 industry so, and what's been happening with  
5 General Motors and Delphi and Viscion and Ford  
6 --

7 Q. Let me refer you to the expert  
8 report of Dr. Susan Halper, which is Exhibit  
9 41. Do you have access to that?

10 A. Yes.

11 Q. Let me turn your attention to  
12 paragraph 23 on page 8. Are you there?

13 A. Yes, I am.

14 Q. Okay, let me read, starting with the

15 third sentence, Dr. Halper is describing  
16 Delphi's Courtland Ohio plant, she says quote,  
17 in this plant, each worker oversees 15  
18 presses, equipment worth hundreds of thousands  
19 of dollars. Workers all have 20 years of  
20 seniority or more and were able to draw on  
21 their experience and on training their  
22 received in statistical process control to (a)  
23 achieve a full year of zero defect production.  
24 A remarkable achievement when the plant  
25 shipped one billion products and (b) debug the

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1 process so that all cavities and moles were  
2 filled on every run, dramatically increasing  
3 the capacity of the plant, end quote. Do you  
4 have any reason to believe that Dr. Halper's  
5 description of Delphi's Courtland Ohio plant  
6 that I just read is in any way inaccurate?

7 A. As a general matter it certainly is.

8 Q. Is her description of this plant  
9 inaccurate?

10 A. I have not been to that plant.

11 Q. Do you have any basis to believe  
12 that her description of this plant is  
13 inaccurate? That's my question.

14 A. Sounds like an exaggeration but  
15 since I haven't been to the plant it's hard to  
16 comment further.

17 Q. Since you haven't been to the plant  
18 you don't know, is that correct?

19 A. You asked me if I'd been to the

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20 plant and observed what she observed. And  
21 since I haven't been to the plant and couldn't  
22 observe what she has observed, but I find what  
23 she says here to be, you know, quite an  
24 exaggeration.

25 Q. And which part of that do you -- do

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1 you dispute the veracity of any part of that  
2 description?

3 A. Well, there's clearly the case that  
4 Delphi is losing money. And it's clearly the  
5 case that their labor costs and their wages  
6 and benefits are far in excess of those of  
7 their competitors. Those two statements mean  
8 that, as a general matter, what she is saying  
9 in paragraph 23 cannot be anything more than a  
10 data point at best.

11 Q. My question was --

12 MR. DECHIARA: I would, Your Honor,  
13 I move to strike Dr. Wachter's responses, non-  
14 responsive.

15 THE COURT: Well, I'm not sure I  
16 understood your question.

17 MR. DECHIARA: Okay. Let me try one  
18 more time.

19 THE COURT: The question was asked  
20 in a particular plant and the workers there as  
21 opposed to generalizing from that question to  
22 Delphi's position overall. So given that  
23 focus, is there anything to doubt that  
24 statement?

25

THE WITNESS: I'm not -- I really

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1 what I said which I guess, you're not, you're  
2 -- I haven't been to the plant. If you want I  
3 would say I can't get out the statement in  
4 that sense.

5 MR. DECHIARA: Thank you, I'll  
6 accept that.

7 BY MR. DECHIARA:

8 Q. Let's look at the prior paragraph in  
9 Dr. Halper's declaration. She describes  
10 another plant in Ohio. Read her description  
11 on this other plant. She says quote, in one  
12 plant I visited in Cleveland Ohio recently a  
13 group of minimum wage workers operating  
14 machines that put labels on bottles that were  
15 sold to a variety of firms selling liquid  
16 products. The process was very simple and  
17 quality requirements were not high or  
18 difficult to meet. In parens, the labels had  
19 to look to the naked eye like it was on  
20 straight. Equipment costs were negligible, in  
21 parens, much of it had been cobbled together  
22 from machines scrapped by other firms, so if  
23 there was down time it was not costly.  
24 Carrying inventory in parens of empty bottles  
25 was cheap and customers were not demanding

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1 about delivery times. Workers were merely  
2 shown what to do, they did not have to read  
3 instructions or perform tests to determine  
4 quality. Do you have any reason to doubt that  
5 Dr. Halper actually observed that plant and  
6 described it accurately?

7 A. I believe, well, I haven't visited  
8 the plant. If she observed this and this is  
9 her description of what she observed I  
10 certainly cannot disagree with it.

11 Q. Now both the workers in Delphi's  
12 Courtland Ohio plant and in the bottling plant  
13 which Dr. Halper describes in paragraph 2,  
14 both fall within the BLS category of machine  
15 operator, is that not correct?

16 A. Yes.

17 Q. Okay. And so in your analysis, in  
18 your comparability analysis of comparing the  
19 wages and benefits of the Delphi workers,  
20 among the workers whose wages and benefits you  
21 were comparing them to were the workers in  
22 this bottling plant, correct?

23 A. Yes.

24 Q. Okay. Now let me refer you to  
25 paragraph 14 and 15 of Dr. Halper's

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1 declaration. She says in paragraph 14 that  
2 many Delphi plant follow a just-in-time  
3 policy, where the plants carry only a few  
4 hours of inventory and production is stopped  
5 if a single defect is found. Let me ask you

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6 first; are you familiar with just-in-time

7 production?

8 A. Yes.

9 Q. Okay. Do you have any reason to  
10 doubt what Dr. Halper here says, that many  
11 Delphi plants use the just-in-time production  
12 method?

13 A. I don't know whether they do or not  
14 as a matter of fact.

15 Q. So, do you have any reason to doubt  
16 her assertion that they do?

17 A. No.

18 Q. Let me refer you to the next  
19 paragraph, starting in the third sentence,  
20 I'll skip the first word it says, quote: if a  
21 worker has produced a defective product and  
22 the defect is not caught before it leaves the  
23 plant, the consequences may be quite  
24 expensive. Some automakers, such as Toyota,  
25 will reject an entire shipment if even one

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1 defect is found. Even worse, if a defective  
2 product is assembled into a car, warranty  
3 costs plus a large fine will be charged back  
4 to the supplier, end quote. Do you have any  
5 reason to doubt the accuracy of what Dr.  
6 Halper says there?

7 A. I haven't been to the plant. And  
8 this is just another data point. These are  
9 individual data points that, I don't  
10 understand the meaning.

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11 Q. Well, I don't believe she's talking  
12 about just one plant. She says many plants --  
13 many Delphi plants use this just-in-time  
14 production method and as I read this she is  
15 saying -- and she's then generally describing  
16 the consequences of the just-in-time  
17 production method. So my question is do you  
18 have any reason to doubt what Dr. Halper is  
19 saying there?

20 A. Well, in a sense that what she's  
21 saying in this sentence and some of the others  
22 -- although, again these are really sort of  
23 individual sort of observations. If these  
24 were more generally true you would expect to  
25 find that these plants were profitable.

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1 Q. So your testimony is that this can't  
2 be true because Delphi is in bankruptcy? Is  
3 that your testimony, Dr. Wachter?

4 A. What I'm saying is that if the  
5 workers are highly productive then, what would  
6 happen is that Delphi would be able to reduce  
7 their prices and they would be more  
8 competitive. These particular observations  
9 that she is making I have no reason to quarrel  
10 with.

11 Q. Okay. Let's stop there. That's my  
12 question. Do you have any reason to quarrel  
13 with her particular observations -- that was  
14 my question, you've answered it. Let's move  
15 on. Now, is it not true that workers who work

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16 in an environment where, if they make mistakes  
17 and cause defects, it has enormous financial  
18 consequences for their employer? Wouldn't it  
19 be fair to say that those workers shoulder a  
20 fair amount of responsibility?

21 A. Yes.

22 Q. And isn't it a generally-observed  
23 fact in the economic world that, everything  
24 else being equal, workers with more  
25 responsibility get paid more? That's why we

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1 pay pilots and flight controllers more than  
2 baggage handlers for example, correct -- among  
3 other reasons?

4 A. As long as you put in among other  
5 reasons' to your examples, I'm willing to  
6 agree. Examples that may be -- perhaps you  
7 could repeat your question, I may have just --

8 Q. It may be hard to isolate because  
9 workers with more responsibility tend to be  
10 more highly skilled. But let me ask you as a  
11 general matter; is it not true that workers  
12 with more responsibility are paid more?

13 A. As a general matter, if you're just  
14 looking at that factor and so you would be  
15 looking at sort of Onet effects, that is not a  
16 variable that has a high pay-off in the  
17 market. Because a lot of people have that  
18 trait. So that as long as the supply of  
19 workers is adequate for the nature of the job  
20 being performed, there is no return to that

21 particular trait.

22 Q. So it's your testimony that as a  
23 general matter someone having more  
24 responsibility, whether it being responsible  
25 for keeping an airplane in the air or saving a

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1 patient's life or avoiding hundreds of  
2 thousands of dollars in adverse economic  
3 consequences to their employer, that just the  
4 increased level of responsibility does not  
5 generally equate with a higher level of pay,  
6 is that your testimony?

7 A. What I just said is my answer to  
8 your question.

9 Q. I'm not sure I understood, maybe you  
10 could try again?

11 THE COURT: I think he's saying if  
12 there are very few plastic surgeons but a lot  
13 of surgeons, surgeons will get paid less than  
14 plastic surgeons.

15 MR DECHIARA: Right, but the  
16 surgeons will always be paid more than, say  
17 the nurses' aid?

18 THE WITNESS: But that's not so much  
19 because of the responsibility it's because of  
20 the greater skill.

21 BY MR. DECHIARA:

22 Q. I understand, obviously, that  
23 there's a skill difference. But is it not  
24 also part of the equation that they have  
25 greater responsibility?

1 A. But that's not clear that they're  
2 being paid more because they have greater sk -  
3 -

4 Q. Well that's what I'm asking you.  
5 Does it not make common sense?

6 A. But that's what I already just  
7 answered.

8 Q. Okay.

9 A. You just didn't like my answer.  
10 Q. Okay. Does it not make sense that  
11 if someone has a greater responsibility, the  
12 person paying them to do the job would want to  
13 pay them a premium to make sure they do the  
14 job well? Because the consequences of their  
15 not -- let me finish -- not doing the job well  
16 is greater?

17 A. Your hypothetical has really taken  
18 off now. You've added four more things to  
19 what you had in your last hypothetical. So if  
20 you want to narrow down your hypothetical  
21 again, I can try and answer the question.  
22 Because you really, truly did add a lot of  
23 things -- they want to pay more, you have they  
24 want to pay more and are likely to pay more.

25 Q. I'm asking a new question.

1 A. Ah.

2 Q. Would not the person paying for the

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3 services, if the person they're paying has  
4 greater responsibilities and the consequences  
5 of their not doing the job well are bigger,  
6 wouldn't the person paying for the services  
7 have a motive to pay a premium?

8 A. Not if there is an adequate supply  
9 of similarly motivated and competent workers  
10 who can be as careful as the one that's on the  
11 job.

12 Q. But there is always a limited  
13 supply, is that not true?

14 A. No, there is not always a limited  
15 supply.

16 Q. So there's always an unlimited  
17 supply of surgeons?

18 A. There's a difference between limited  
19 and unlimited. There is more -- it appears at  
20 the market a lot of the traits that you're  
21 talking about as being more responsible do not  
22 have a payoff because in the market there is  
23 enough supply to deal with that demand factor.

24 Q. What is a compensating differential?

25 A. A compensating differential is, as

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1 one example you work in a coal mine and it's a  
2 bad job. You get paid more.

3 Q. Okay.

4 THE COURT: I'm sorry, I didn't hear  
5 that.

6 THE WITNESS: One example of a  
7 compensating differential is that you work in

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8 a coal mine, it's a lousy, dangerous job and  
9 you get paid more because of it.

10 MR. DECHIARA: So an adverse working  
11 condition, everything else being equal, leads  
12 to higher pay. Is that the general theory  
13 behind compensating differential?

14 A. Adverse has to be interpreted in  
15 terms of where there's a payoff. Not all  
16 adverse working conditions have a payoff.

17 Q. some do, some don't is that what  
18 you're saying?

19 A. Yes. The ones that do, for example  
20 are things like heights. Like if you're  
21 working high up, extremes in temperatures,  
22 wearing protective equipment, working with  
23 contaminants are the ones that have high  
24 payoffs.

25 Q. What about stress?

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1 A. Stress I don't think -- I didn't  
2 look but I don't think stress has a high  
3 payoff.

4 Q. Well have you ever studied or looked  
5 at studies at whether high-stress jobs or  
6 whether high stress is a compensating  
7 differential?

8 A. I have no reason to suppose it is, I  
9 mean most --

10 Q. That wasn't my question. Have you  
11 ever looked at studies, or done your own  
12 study, of whether high stress is a

13 compensating differential?

14 A. I haven't looked at any studies  
15 specifically on stress other than as appears  
16 in the New York Times.

17 Q. Okay. And the New York Times is not  
18 an academic periodical that you would rely on,  
19 is that correct?

20 A. I often don't rely on the New York  
21 Times.

22 Q. Okay. Let me refer you to Dr.  
23 Halper's description on paragraph 15 of her  
24 declaration. First sentence, she says that  
25 just-in-time production increases stress. Do

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1 you have any reason to doubt that that's true?

2 A. I don't know whether it is true or  
3 not true.

4 Q. So I take it, your answer is no, you  
5 have no reason to doubt that it's true?

6 A. Yes.

7 Q. Okay. Now in your study you compare  
8 the pay of Delphi production workers to the  
9 pay of all workers in the BLS classifications  
10 of one machine operators, assemblers and  
11 inspectors and two, handlers, equipment  
12 cleaners, helpers and laborers. Did I get  
13 that right?

14 A. Yes.

15 Q. Okay. And in the category of  
16 machine operators we -- two job  
17 classifications are sewing-machine operators

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18 and dry cleaning machine operators, is that  
19 correct?

20 A. I'm sorry?

21 Q. Sewing-machine operators and dry  
22 cleaning machine operators?

23 A. I think so, yes.

24 Q. Okay. Now someone who is stitching  
25 a cuff onto a shirt or pressing a pair of

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1 pants with a dry cleaning machine is making a  
2 product that has less value than the complex  
3 electronic systems that Delphi makes, correct?

4 A. I think Delphi has some of those  
5 workers and it pays them the same as it pays  
6 the other production workers.

7 Q. Can you answer my question?

8 A. That's what I did.

9 Q. Okay. The product created by a  
10 sewing-machine operator or a dry cleaning  
11 machine operator is a lower value product than  
12 the complex electronic products that Delphi  
13 makes, correct?

14 A. I guess so, I'm not sure I  
15 understand exactly the question, but I'll say  
16 I guess so.

17 Q. Okay. Well do you have any idea  
18 what Delphi does?

19 A. Yes.

20 Q. Okay. And you understand that they  
21 make complex electronic products.

22 A. That is some of the things they do,

23 yes.

24 Q. Okay. Let me try it a third time.

25 Those products that he makes, now he makes a

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1 range of products but I'm talking about those,  
2 which is in the core of the products it plans  
3 to continue to make, is that your  
4 understanding?

5 A. Yes.

6 Q. Okay. Those are higher value  
7 products than the shirt or the pressed pair of  
8 pants, correct?

9 A. Higher valued products, yes.

10 Q. Okay, thank you. Now Delphi doesn't  
11 compete against the corner dry cleaner or the  
12 textile factory that makes shirts, correct?  
13 It doesn't compete for business?

14 A. Yes, it does not.

15 Q. Okay, and in fact, Delphi doesn't  
16 compete for business against the vast majority  
17 of firms in the private sector of the United  
18 States whose workers are in the same BLS  
19 occupational categories as the Delphi  
20 production workers, correct?

21 A. No, you're wrong.

22 Q. It competes for business against the  
23 vast majority of those companies?

24 A. It competes for labor and that's  
25 part of its business.

1 Q. No -- competes for work, competes  
2 for contracts?

3 A. Complete for work -- they do compete  
4 for workers --

5 Q. No, no, no, no, no, no. Not  
6 workers. Does it compete for bus -- do you  
7 know what I mean by business? A firm, to make  
8 money goes out and tries to make contractual  
9 relations with other firms that will pay them  
10 money in return for services. That's what I  
11 mean by business. With that definition of  
12 business. For example, the kind of work that  
13 Delphi does for GM? It's true, is it not,  
14 that Delphi does not compete for business with  
15 the vast majority of firms in the private  
16 sector of the United States, whose workers are  
17 in the same BLS occupational categories --

18 A. They're not --

19 Q. Let me finish as the Delphi  
20 production workers?

21 A. Okay. Now that we've gotten it  
22 narrowed down, they are not in the same  
23 product market and, therefore, they do not  
24 compete. In the same -- in the product market

25 Q. And is that the same way of saying

1 for business using the way I was, in my  
2 layperson's terms, describing it?

3 A. I don't know how you're using it.

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4 Q. Okay, they don't compete in the same  
5 product market. And a product market is a  
6 market in which you try to sell the product  
7 you make, right?

8 A. Yes.

9 Q. Okay. I think we're on the same  
10 page. You conclude in your study that the  
11 company's section 1113 proposal would reduce  
12 the paying benefits of Delphi's skilled and  
13 production workers roughly to the level of  
14 comparable workers throughout the economy,  
15 correct?

16 A. Yes.

17 Q. Okay. And, in fact you have a  
18 table, and let me refer you back to your  
19 declaration, pages 28 and 29 of your  
20 declaration. Are you there?

21 A. Yes.

22 Q. Okay, why don't we focus -- page 29  
23 table Roman VII, Arabic 2, and there you  
24 identify the wages and salaries of the average  
25 worker in the private sector of the U.S.

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1 economy in those two BLS categories I was  
2 talking about as \$13.55. Do you see that?

3 A. Yes.

4 Q. Okay. Have you reviewed Delphi's  
5 Section 1113 proposal?

6 A. I've certainly reviewed; I'm not  
7 sure what the terms are. I have certainly  
8 reviewed their proposals.

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9 Q. Okay. And so you know -- or let me  
10 put it this way, is it accurate that -- and  
11 I'm putting aside -- there are referred a lot  
12 of testimony about multiple and contingent  
13 proposals et ceterA. Your report focuses on  
14 the November, 2005 proposal, the one without  
15 the GM subsidy, correct?

16 A. Yes.

17 Q. Okay. And that is -- that proposal  
18 for the production workers -- well first --  
19 Delphi, in its proposal at least, divides the  
20 production workers into low production and  
21 high production. Are you aware of that?

22 A. They have different categories. I  
23 didn't know they use the term high and low.

24 Q. Let me refer you to Exhibit H to Mr.  
25 Butler's declaration, which is Exhibit 7. Do

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1 you have that in front of you?

2 A. There's nothing in here. Oh, here  
3 it is, I'm sorry. 7A?

4 Q. No, the Butler declaration is  
5 Exhibit 7, and I'm referring you to Exhibit H  
6 to that declaration. Now that you're at  
7 Exhibit H, let me ask you to flip to Appendix  
8 A-2 of that exhibit.

9 A. A-1-2?

10 Q. No, A dash 2. There's an A-1 and  
11 there's an A-2. I'm referring you to A-2.

12 A. I see page one of --

13 Q. Just go to the first page of

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14 Appendix A dash 2.

15 THE COURT: What document is it?

16 Was it one of the proposals, right?

17 THE WITNESS: Wages?

18 MR. DECHIARA: It's the -- it's one  
19 of the proposals, yes.

20 THE COURT: Which one is it?

21 MR. DECHIARA: I believe it's the  
22 November, 2005 proposal.

23 THE COURT: All right. So it should  
24 say that down in the lower corner.

25 MR. DECHIARA: Although --

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1 THE COURT: There's a little date in  
2 the lower corner.

3 BY MR. DECHIARA:

4 Q. Oh no, I'm sorry, it's the March 24,  
5 '06.

6 A. Okay.

7 Q. Are you there? It says Appendix A-  
8 2, Wages at the top?

9 A. Yes.

10 Q. Okay. Is it your understanding that  
11 this is the March proposal without GM support  
12 for -- yeah?

13 A. Yes.

14 Q. Have you seen this document before?

15 A. I think so, but I don't recall.

16 Q. Well look in the middle, there's a  
17 wage scale. It says low production, high  
18 production, skilled. Have you ever seen that

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19 before?

20 A. I don't recall the terms low  
21 production, high production. I recall the 12-  
22 13 range.

23 Q. Okay. So you don't know how Delphi  
24 and it's proposal's dividing low production  
25 verses high production workers?

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1 A. That's correct.

2 Q. You don't know if it's based on  
3 skill or some other factor?

4 A. That's correct.

5 Q. Okay. Do you know how many low  
6 production work -- what the ratio is of low  
7 production workers to high production workers?

8 A. Let me step back for a minute.  
9 Exactly how the differentiating the two --  
10 which workers it precisely applies to, I'm not  
11 sure. But certainly within the production  
12 category, there are different categories of  
13 workers, some of which like the handlers.

14 That might be what they're calling low  
15 production here. And the high production  
16 would be the people on the --

17 Q. But you don't know?

18 A. I don't know for certain but what  
19 I'm saying is probably true. I don't know if  
20 they're using a --

21 Q. Well, are you speculating? Do you  
22 know, has anyone ever told you or have you  
23 ever inquired and gotten an answer as to how

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24 the company divided low production from high

25 production?

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1 A. Again, I just don't recall the term,  
2 but I know they used the term handlers and the  
3 people who run the machines. And that could  
4 very well be what they're saying here and I --

5 Q. That could very well be. But do you  
6 know?

7 A. More than I've said, I don't know.

8 Q. Okay. Do you know the ratio between  
9 low production and high production? You don't  
10 know what the difference is, do you know the  
11 ratio of who -- how many fall on one label  
12 verses the other label?

13 A. No, we don't, I don't.

14 Q. Okay. Let me refer you back to your  
15 table on your declaration, page 29. I'm going  
16 to be referring back to this repeatedly, so  
17 you might want to keep this handy. Your  
18 table, Roman VII Arabic 2 on page 29.

19 A. Yes.

20 Q. For Delphi, for wages and salaries  
21 you come up with 12.50. Where did you get  
22 12/50?

23 A. I believe it's the average of the 12  
24 and the 13.

25 Q. Okay, but you don't know the ratio.

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1 So you don't know if that's an accurate  
2 average, correct?

3 A. It's certainly an average of 12 and  
4 13.

5 Q. But if one totaled the wages of all  
6 the workers who would receive those salaries  
7 or those wages under the proposal, you  
8 wouldn't necessarily get an average by the  
9 number of workers. You wouldn't necessarily  
10 get 12.50, correct?

11 A. It's not a weighted average.

12 Q. It's not. Thank you.

13 A. And this 12.50 would, on this -- let  
14 me refer you back to Appendix A-2. The \$13  
15 would be the highest wage that any production  
16 worker even the production workers in the high  
17 production category, would receive no matter  
18 what their level of seniority and experience,  
19 correct?

20 A. Yes.

21 Q. Okay. And that is below the 13.55  
22 which you identify as the average wage for  
23 private sector workers in the production  
24 classifications, correct.

25 A. That is, but it's compensation that

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1 matters not the individual wage differentials.

2 Q. Okay, but I'm just focusing on wages  
3 here. I mean, it's indisputable; it's below  
4 that wage, correct?

5 A. Yes. Whether it has any labor

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6 market impact at that small a differential,  
7 but it is a negative number.

8 Q. Okay. And in fact, when you say  
9 13.55 -- 13.55 is not a median. So that does  
10 not mean half the workers get more and half  
11 get less, it's an average I understand that.  
12 But that still means a lot of workers get more  
13 than that 13.55, correct?

14 A. A lot get more and a lot get less,  
15 yes.

16 Q. Okay. Now, in performing a  
17 comparability analysis, one should strive to  
18 compare workers at issue to workers that work  
19 in similar jobs, is that a fair statement?

20 A. Yes.

21 Q. Okay. In general it's best to  
22 compare apples to apples, not apples to  
23 oranges, correct?

24 A. Yes.

25 Q. Okay. So isn't it, shouldn't one

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1 not control for, or take into account,  
2 differences that may make the comparisons  
3 inappropriate?

4 A. Could you say that, state that  
5 again?

6 Q. In doing a comparability analysis,  
7 should one not take into account factors that  
8 might make the comparisons inappropriate?  
9 That might result in comparing apples to  
10 oranges?

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11 A. Well, there are a lot of negatives  
12 there. I wouldn't take into account things  
13 that weren't relative --

14 Q. Let me take out the negatives, it'll  
15 make it easier. One should, account for --

16 A. One should use, one should compare  
17 comparable jobs.

18 Q. Let me phrase my question without  
19 the negative. A labor economist, doing his  
20 job correctly should take into account factors  
21 that would make the comparisons inappropriate,  
22 correct?

23 A. Take into account. You should not  
24 include that would make the comparison  
25 inappropriate, yes.

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1 Q. And there's no question, is there,  
2 that large firms, everything else equal, pay  
3 more than small firms?

4 A. As an empirical regularity, that is  
5 true.

6 Q. Okay. Let me refer you to Dr. Paula  
7 Voos' declaration, which is Exhibit 40. And  
8 let me refer to table 1 on page 5.

9 A. Wait, I'm not there yet -- 40, yes  
10 you're right. Okay.

11 Q. And table 1 uses BLS data to show  
12 that in the goods-producing industries, total  
13 compensation generally rises based on the  
14 number of employees a firm employs, correct?

15 A. Correct.

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16 Q. And you have no reason to doubt the  
17 accuracy of this table, do you?

18 A. It's the interpretation placed on  
19 the table that's inaccurate.

20 Q. And that's not what I'm asking you  
21 about. I asking do you have any reason to  
22 doubt that this table accurately depicts the  
23 data?

24 A. I think she probably copied the data  
25 correctly.

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1 Q. And do you have any reason to doubt  
2 that the data reflects reality?

3 A. You mean, whether BLS got it right?

4 Q. Yes.

5 A. I think the BLS probably got it  
6 right.

7 Q. Okay. And this chart shows that the  
8 -- in firms that employ more than 500 or 500  
9 or more employees pay substantially more both  
10 in wages and in total compensation that the  
11 firms that employ fewer employees, correct?

12 A. That's true but it's -- it has  
13 nothing to do with comparability in itself,  
14 unless she has some more things to say about  
15 the table, which she does not.

16 Q. Okay. And Delphi employs tens of  
17 thousands of employees, does it not?

18 A. That's correct.

19 Q. Now if we go back to your page 29,  
20 table Roman VII, Arabic 2. The chart where

21 you compare where Delphi's production workers  
22 pay and benefits would be with workers  
23 throughout the U.S. economy?

24 A. I'm sorry, what table are we on?

25 Q. Table seven, it's Roman numeral VII

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1 point Arabic number 2.

2 A. Tell me the tab again, I'm sorry.

3 Q. It's page 29.

4 THE COURT: He wants the tab of this  
5 exhibit.

6 MR. DECHIARA: Oh, it's 16.

7 THE WITNESS: Yes. What page you  
8 want?

9 BY MR. DECHIARA:

10 Q. 29.

11 A. Yes.

12 Q. Look at your column, comparable  
13 workers economy-wide. And you have a number  
14 there for total compensation and below that a  
15 number for wages and salaries?

16 A. Yes.

17 Q. If you controlled for firm size, and  
18 only look at firms that had more than 500  
19 workers that number would go up, would it not?

20 A. It would be inappropriate to do so  
21 in a comparability analysis.

22 Q. Well --

23 A. If you were asking me to do  
24 something --

25 THE COURT: No, no, just ask him,

1 just answer his question.

2 MR. DECHIARA: I'm not asking you  
3 for your interpretation.

4 BY MR. DECHIARA:

5 Q. My question is, would that number go  
6 up?

7 A. Depends on what other controls you  
8 have in the equation.

9 Q. Just one. You do exactly what you  
10 did, you control for one factor, you limit it  
11 to firms with over 500 workers. Would that  
12 number go up?

13 A. Which number?

14 Q. Well, let's start with the 21.33,  
15 the number for total compensation?

16 A. If you only had that -- if you only  
17 thought the only thing that mattered in the  
18 world was firm size that would go up.

19 Q. Okay. And the number below that,  
20 for wages and salaries, that number would go  
21 up?

22 A. That would go up.

23 Q. Okay. Now, in your comparability  
24 analysis you also fail to control for  
25 industry, correct?

1 MR. BUTLER: Objection, to the

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2 question. You used the word failed.

3 THE COURT: You should rephrase it.

4 BY MR. DECHIARA:

5 Q. You did not do control for industry,  
6 did you?

7 A. Yeah, I actually like the word  
8 failed because what you're doing is failing to  
9 correct for other things that you should  
10 correct

11 THE COURT: All right, let's ignore  
12 the word fail and just answer his question.

13 BY MR. DECHIARA:

14 Q. You did not control for industry,  
15 did you?

16 A. I wouldn't want to, so I didn't.

17 Q. Doctor Wachter --

18 THE COURT: There isn't a doubt.  
19 That was a pretty fast answer.

20 BY MR. DECHIARA:

21 Q. One can, in doing a comparability  
22 analysis control for industry, can one not?

23 A. If one wants to do the study  
24 incorrectly one can, yes.

25 MR. DECHIARA: I would, Your Honor

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1 ask to have the portion of that response as  
2 non-responsive, stricken as non-responsive.

3 THE COURT: Let's just go on.

4 MR. DECHIARA: Okay.

5 BY MR. DECHIARA:

6 Q. There's no question that firms in

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7 the motor vehicle industry pay more than the  
8 average in the U.S. economy?

9 A. Yes, those firms pay a wage premium.

10 Q. Okay. So let me ask you the same  
11 question. On table 7.2 that I did when I  
12 asked you about firm size. If you controlled  
13 for industry, in other words, if you compared  
14 the Delphi workers only to workers in the  
15 industry in which they work, the motor vehicle  
16 parts industry, the numbers in the column that  
17 says comparable workers would -- let's start  
18 with the total compensation number. Do you  
19 know whether that number would go up?

20 A. I'd like to point out the --

21 THE COURT: No, just yes or no.

22 BY MR. DECHIARA:

23 Q. Can you please answer my question?

24 A. Not necessarily given your previous  
25 sentence to the predicate you've built up to

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1 this hypothetical. I answered the previous  
2 question to say that the firms in the motor  
3 vehicle industry paid a wage premium. In that  
4 sense, this number would not go up. Because  
5 you would be controlling for the factors you  
6 need to control for so that it wouldn't be a  
7 wage premium.

8 Q. Okay. I'm not sure I understood  
9 what you said but let me ask you -- let's back  
10 up, let's go back to the Voos declaration  
11 which is Exhibit 40. And I'll ask you to look

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12 at table 3 on page 7.

13 A. I'm sorry, where are we going now?

14 THE COURT: Exhibit 40

15 MR. DECHIARA: It's Dr. Voos'

16 declaration, which is Exhibit 40, and I will

17 ask you to turn to page 7.

18 THE WITNESS: Page 7.

19 MR. DECHIARA: Table 3.

20 THE WITNESS: This is, we're still

21 in Exhibit H?

22 MR. DECHIARA: No, no, no, no.

23 THE COURT: This is Exhibit 40.

24 THE WITNESS: I'm here.

25 By MR. DECHIARA:

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1 Q. You're at the Voos declaration?

2 A. Yes.

3 Q. Please turn to page 7. Do you see  
4 table 3 there?

5 A. Yes.

6 Q. You've seen this before; you  
7 reviewed the Voos declaration, did you not?

8 A. Yes.

9 Q. And this shows that according to the  
10 BLS data that -- now this is wages. That wages  
11 in the motor vehicle parts industry are 32.8  
12 percent, or almost a third higher, than wages  
13 throughout the private sector economy.

14 MR. BUTLER: Objection.

15 MR. DECHIARA: Am I reading that  
16 correctly?

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17 THE COURT: I'm sorry?

18 MR. BUTLER: Objection to the form  
19 of the question. The chart says earnings it  
20 does not say wages.

21 MR. DECHIARA: It does say earnings  
22 but it means wages.

23 BY MR. DECHIARA:

24 Q. Am I correct?

25 A. No. Average hourly earnings are not

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1 the same as wages.

2 Q. How is it different?

3 A. Wages usually refer to wage rates  
4 average hourly earnings usually refer to the  
5 total pay divided by the number of hours.

6 Q. Okay. So your earnings are about a  
7 third higher, correct?

8 A. Could you restate the whole  
9 question?

10 Q. Does this table not show that the  
11 earnings, the average hourly earnings for  
12 workers in the motor vehicle parts industry  
13 are approximately one third higher than for  
14 the private sector in general?

15 A. Yes.

16 Q. And you have no doubt that this  
17 chart accurately depicts the BLS data, do you?

18 A. I think the wage in motor vehicle  
19 parts is higher than the wage in the economy  
20 overall.

21 Q. That was not my question. Do you

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22 have any doubt that this chart accurately

23 depicts the BLS data?

24 A. I don't think -- I would doubt that

25 she made any mistakes.

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1 Q. Okay. And you have no reason to  
2 doubt that the BLS data accurately describes  
3 reality, do you?

4 A. Yes.

5 Q. You don't have any reason to doubt  
6 it?

7 A. I do not doubt that it states  
8 reality.

9 Q. Okay. So let's now go back and let  
10 me go back to your table 7.2. Now let's focus  
11 on the wages -- are you on your table 7.2?

12 A. Yes.

13 Q. The middle column. The column where  
14 you compare the wages of the comparable  
15 workers?

16 A. Yes.

17 Q. Okay now, let me ask you for the  
18 wages and salaries number for comparable  
19 workers. There's a number there, do you see  
20 that number?

21 A. Yes.

22 Q. Okay. Now if you did the exact same  
23 study that you did, the exact same  
24 comparability analysis but you controlled for  
25 industry in the sense that you limited the

1 comparison group to workers in the motor  
2 vehicle parts industry would that number go  
3 up?

4 A. I really need to ask that -- if  
5 you're saying that this is a comparability  
6 study, the number wouldn't go up because you  
7 wouldn't do it. If you put that variable in  
8 the equation, then that number that you're  
9 referring to would go up, but that has nothing  
10 to do with the comparability st --

11 Q. My question was, would it go up and  
12 you answered my question, thank you.

13 A. You put in the word comparability so  
14 I answered appropriately I thought.

15 Q. Now in doing a comparability  
16 analysis, one can control for more than one  
17 factor, correct?

18 A. Correct.

19 Q. One could, say, control for both  
20 firm size and industry, correct?

21 A. Correct.

22 Q. And one could even control for  
23 experience, and one could control for how many  
24 years of experience the workers have on the  
25 job, correct?

1 A. Correct.

2 Q. And you didn't -- I won't use the  
3 word fail -- you did not do that in your

4 study, correct?

5 A. That's correct.

6 Q. And if one controlled for experience  
7 would that number on table 7.2 -- and I'm not  
8 going to ask you if, in your view it should be  
9 done or should not be done but if mechanically  
10 one did it, that number would go up, correct?

11 A. A little bit.

12 Q. Okay. You answered my question.

13 A. You're adding one at a time?

14 Q. What's that?

15 A. You're just adding one variable at a  
16 time.

17 Q. I'm just asking you one question at  
18 a time. You just have to answer my questions.  
19 You're doing great. Did you control for  
20 regional variance?

21 A. I didn't because I didn't think I  
22 needed to.

23 Q. Okay. And is it not a fact that  
24 many of Delphi's plants are located in  
25 Michigan, Indiana, Ohio and Wisconsin and that

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1 the pay rates -- the going pay rates for  
2 machine operators in those states is above the  
3 national average.

4 A. That fact at the end of your  
5 sentence is true. Does it have anything to do  
6 with comparability? No.

7 Q. But if one did control for those  
8 particular plants, if one controlled for where

9 they were located the comparability number  
10 would go up, correct?

11 A. Which states are you putting in?

12 Q. The upper middle west.

13 A. None of the southern states?

14 Q. No, no. I think what you refer --

15 the old indust -- what used to be called the  
16 industrial belt. Let me be specific,  
17 Michigan, Indiana, Ohio and Wisconsin, that is  
18 where the plants are. The number would go up,  
19 correct?

20 A. Certainly anytime you put in a  
21 variable that will have higher wages attached  
22 to it; it will make these numbers go up. The  
23 question always is what is the basis for  
24 putting it in?

25 Q. Okay. And we will have our experts

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1 explain our position on that. Now if,  
2 controlling for regional variance has the  
3 advantage of accounting for any conditions of  
4 labor demand or supply that are specific to  
5 that location, correct?

6 A. Was that a question?

7 Q. Yes.

8 A. Could you repeat that?

9 Q. Yes. Controlling for regional  
10 variance, in other words, the region in which  
11 the workers are located, has the advantage of  
12 accounting for any conditions of labor demand  
13 or supply that are specific to that location?

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14 A. If you thought you're dealing with  
15 local labor market that would be true.

16 Q. Okay. And is it your view that the  
17 Delphi workers do not work in a regional labor  
18 market?

19 A. The Delphi workers work in a  
20 national labor market.

21 Q. Well, whether a labor market is  
22 national or local depends on what the job is,  
23 doesn't it?

24 A. Not particularly. The United States  
25 labor market is a very much a national market

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1 in that workers move and firms move. And I  
2 think it's generally recognized that our  
3 economy now is much more competitive  
4 nationally if not internationally; so that  
5 workers don't in a sense, work in a particular  
6 state.

7 Q. If you post an opening for a tenure  
8 track position in the economics department of  
9 a -- if you post a job opening for a tenure  
10 track teaching position in the University of  
11 Pennsylvania Economics Department, I assume  
12 you get applications from all across the  
13 country, is that correct?

14 A. All over the world.

15 Q. All over the world. If the  
16 cafeteria service of the University of  
17 Pennsylvania posted an opening for a kitchen  
18 worker I assume they do not get applications

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19 from all across the country, is that true?

20 A. Probably not.

21 Q. In fact, the cafeteria service pays  
22 the going rate in the Philadelphia area,  
23 correct?

24 A. I actually don't know what -- when I  
25 was deputy provost and interim provost I used

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1 to know what the cafeteria workers got paid,  
2 but I don't currently.

3 Q. Right, but you have no doubt that  
4 the rate they pay for kitchen workers is what  
5 the going rate is in Philadelphia?

6 A. I don't know if they pay that going  
7 ra --

8 THE COURT: You know, I'm sorry. I  
9 don't buy the cafeteria example.

10 BY MR. DECHIARA:

11 Q. Well, let me be more specific. Do  
12 you know, have you done a study of whether,  
13 when a Delphi plant in Michigan posts an  
14 opening, or in the past has posted openings,  
15 whether, from what area, from how broad an  
16 area they draw applicants? Have you done a  
17 study?

18 A. I haven't published a study but we  
19 certainly know that the build up --

20 THE COURT: No, go ahead go ahead.

21 BY MR. CHIARA:

22 Q. The question is did you do a study?  
23 A. I did not publish a study.

24 Q. Okay.

25 THE COURT: Well, I'm sorry. Have

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1 you studied that issue?

2 THE WITNESS: I've studied the issue  
3 in terms of what's happened to the -- what led  
4 to the development of the automobile industry  
5 in this area of the country.

6 MR. DECHIARA: That's not my  
7 question.

8 THE WITNESS: Okay.

9 BY MR. DECHIARA:

10 Q. My question is have you looked at  
11 any empirical data on when, in the past when  
12 Delphi has looked for workers, a particular  
13 plant has looked for workers, the breadth of  
14 the area from which they received applicants?

15 A. No.

16 Q. Thank you. You note in your papers  
17 that sometimes plants move to the South to get  
18 cheaper wages, right?

19 A. And become more competitive, yes.

20 Q. And the reason wages are cheaper in  
21 the south than in the north is because, for  
22 certain groups of workers, there is a regional  
23 labor market that pays a different wage,  
24 correct?

25 A. By cheaper you mean lower?

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1 Q. Yes.

2 A. That's right.

3 Q. Thank you. Now in the Tower case,  
4 you submitted a declaration did you not?

5 A. Yes.

6 Q. I'd like to show that to you now.

7 (Discussion away from the  
8 microphone).

9 MR. DECHIARA: I'm sorry, Your  
10 Honor, did I give you a copy? The most  
11 important person in the room I forgot, I'm  
12 sorry.

13 THE COURT: There you go. Thank  
14 you.

15 BY MR. DECHIARA:

16 Q. Let me refer you -- is this the  
17 report that you submitted on behalf of Tower  
18 Automotive for their Section 1113 proceeding?

19 A. Yes it is, uh-huh.

20 Q. Let me refer you to pages -- the  
21 graphs that appear on pages 13 and 14. Now  
22 Tower Automotive is an auto supply company  
23 like Delphi?

24 A. That's correct.

25 Q. And it employs industrial production

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1 workers like Delphi, correct?

2 A. Yes.

3 Q. Okay. Now you have on page 13,  
4 Exhibit 3.2 and on page 14, Exhibit 3.3 and

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5 one is an analysis of the average hourly wages  
6 of Tower Automotive employees in comparable  
7 occupations economy-wide for a certain date,  
8 and the next exhibit on the next page, Exhibit  
9 3.3 is the average wages of Tower's hourly  
10 workers at twelve unionized plants and  
11 comparable occupations in their local labor  
12 markets, as measured by Department of Labor  
13 data. Do you see that?

14 A. Yes, I do.

15 Q. And if you turn to the next page,  
16 page 15, paragraph 37, I'll read the second  
17 sentence of paragraph 37 you say, use of local  
18 market comparison data leads to a market wage  
19 estimate of 14.23 verses an estimate of 13.25  
20 based on national wage data. This difference  
21 reflects the fact that the twelve Tower plants  
22 tend to be located in areas that have average  
23 wages for the ten benchmark occupations that  
24 are higher than the national average compiled  
25 across all labor markets. Do you see that?

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1 A. Yes.

2 Q. You chose not to do a similar  
3 analysis in this case, is that correct?

4 A. Can I explain, or not?

5 Q. Well first if you could answer the  
6 question. Is that correct, you chose not to  
7 do a similar analysis in this case. It's a  
8 yes or no question.

9 A. I chose not to.

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10 Q. Okay. Now you formed an opinion --

11 A. So I can't explain?

12 Q. Your counsel will have a chance to

13 ask you appropriate questions on redirect.

14 You formed an opinion in the Tower Case about

15 whether the company's Section 1113 proposals

16 in that case were reasonable. Do you remember

17 forming that opinion?

18 A. Yes.

19 Q. Okay and you believed that Tower's

20 Section 1113 proposal in that case were highly

21 reasonable.

22 A. Yes.

23 Q. Okay. Let's look at page 21 in the

24 Tower case, your Exhibit 4.2. This chart

25 shows, does it not, for the non-skilled as

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1 opposed to the skilled employees after Tower  
2 implemented its Section 1113 proposal those  
3 employees would have a wage premium measured  
4 nationally, against a national average of 33  
5 percent, correct?

6 A. That's correct.

7 Q. And that in your view was highly  
8 reasonable.

9 Q. That's correct.

10 A. And in this case if we go back to  
11 your table 7.2, Delphi's proposal would leave  
12 Delphi's production workers with a deficit,  
13 the opposite of a premium, but a deficit below  
14 the national average. Not factoring for any

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15 of all the other factors we talked about, firm

16 size et ceterA. Under the national average

17 of an 8 percent deficit, correct?

18 A. Correct.

19 Q. What are legacy costs?

20 A. Legacy costs are costs inherited

21 from GM in this particular case.

22 Q. Okay now I'm not talking about this

23 particular case. In general are legacy costs,

24 costs that are not incurred -- well, let me

25 ask you can you -- what in general -- how

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1 would you describe legacy costs?

2 A. It's used differently. Legacy costs

3 usually refer to a change in regime and it

4 refers to the cost from the old regime that

5 are inherited by the new regime.

6 Q. Do legacy costs include accrued

7 pension liabilities?

8 A. Yes, they certainly can.

9 Q. Well you would consider accrued

10 pension liabilities to be legacy costs,

11 correct?

12 A. Well in what context are you

13 referring?

14 Q. In general -- speaking in general

15 terms. You used the word legacy costs in your

16 analysis, correct?

17 A. Accrued, depending upon the

18 circumstances either they can or they may not

19 be.

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20 Q. Under what circumstances would  
21 accrued pension liabilities not be considered  
22 legacy costs?

23 A. Not be considered?

24 Q. Yes.

25 A. If a firm is continuing to fund its

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1 pension plan, the pension plan may be under  
2 funded and is putting money in that would be a  
3 -- an example of what you're saying.

4 Q. So if it's not continuing to fund  
5 its pension plan the accrued pension  
6 liabilities are legacy costs?

7 A. I'm not sure how to answer your  
8 hypothetical.

9 Q. It's not a hypothetical. I'm asking  
10 you a question. You made a distinction?

11 A. Yes.

12 Q. I asked you what are legacy costs  
13 generally?

14 A. Right.

15 Q. You said they could be accrued  
16 pension liabilities in some cases and not  
17 others. I said what cases. You said if the  
18 company is not funding the pension they are  
19 legacy costs.

20 A. Well if they're not funding it then  
21 there are no costs, so they're not legacy  
22 costs.

23 Q. Well if they're not contributing,  
24 but the liabilities are still there?

25 A. The liabilities are still there,

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1 that would be a legacy cost.

2 Q. Okay. And is it your view -- and  
3 those pension liabilities could have been  
4 accrued and in many cases are accrued by  
5 former workers, workers who are now retired,  
6 correct?

7 A. Yes.

8 Q. Okay. Now is it your view in  
9 analyzing a company's -- I'm not specifically  
10 talking about Delphi -- but a company's wages  
11 and benefits when doing a comparability study  
12 one should include legacy costs?

13 A. Absolutely.

14 Q. Okay. Even though those costs were  
15 incurred not by -- or are not being incurred  
16 by the present workers but workers who  
17 predated the present workers?

18 A. Absolutely.

19 Q. Okay. Now, Delphi management, as  
20 opposed to you, their expert, when calculating  
21 their labor costs do not include legacy costs,  
22 correct?

23 A. Do not include legacy costs?

24 Q. Yes.

25 A. In doing what they don't include

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1 legacy costs?

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2 Q. In analyzing their own labor costs.

3 A. I believe they do.

4 Q. Okay. Have you read the Butler  
5 declaration?

6 A. I've read parts of it.

7 Q. Well let's look at it together. Can  
8 you turn to Exhibit 7 which is the Butler  
9 declaration?

10 A. Okay.

11 Q. Okay, turn to page 32, paragraph 98.

12 Let me refer you to the last sentence of  
13 paragraph 98. It says, quote, in connection  
14 with the current restructuring, however,  
15 Delphi management made an important policy  
16 decision in November 2005 to exclude those  
17 legacy costs in analyzing its average U.S.  
18 hourly labor costs and in direct bidding for  
19 new supply contracts, end quote. Do you have  
20 any reason to doubt that Mr. Butler's  
21 statement there is inaccurate? Is accurate?

22 A. It is accurate and it is in no  
23 contradiction with what I said.

24 Q. Well you said legacy costs should be  
25 included in analyzing the company's wages and

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1 benefits. And the company says when it  
2 analyzes its average U.S. hourly labor costs  
3 it does not include legacy costs. Am I  
4 reading that wrong?

5 A. Yes, you are.

6 Q. How am I reading that wrong?

7           A.    Read the rest of the sentence,  
8    you'll see.  And in direct bidding for new  
9    supply contracts.

10          Q.    And how is my interpretation  
11    incorrect based on those last words?

12          A.    There was a -- in bidding for new  
13    business you would not include legacy costs  
14    because they're fixed costs and not marginal  
15    costs.  That's very different from that being  
16    an element of costs because whether a firm  
17    goes bankrupt and has to liquidate or not,  
18    depends on those fixed costs.  So there is a  
19    difference between fixed costs as it affects  
20    output, which is what's being stated in  
21    paragraph 98.  And my statement which says  
22    that if you don't -- if you have these fixed  
23    and legacy costs, although it doesn't affect  
24    your output level, it affects the decision to  
25    stay in business or not stay in business.

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1           Q.    But you agree that in bidding for  
2    new work it's appropriate not to account for  
3    legacy costs, right?

4           A.    That's what I just said.  It's  
5    perfectly legitimate.  There's no  
6    contradiction to anything that I've said.

7           Q.    And you read that sentence from Mr.  
8    Butler as not being in the conjunctive.  It's  
9    not that they exclude legacy costs both (a) in  
10   analyzing their average U.S. labor costs and  
11   (b) indirect bidding.  But somehow you put

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12 those two things together.

13 A. Can you read that sentence back,  
14 that question back to me?

15 MR. DECHIARA: I -- I won't belabor  
16 this further, Your Honor.

17 THE COURT: Okay.

18 MR. DECHIARA: Let me move on.

19 BY MR. DECHIARA:

20 Q. Delta Airlines has, had and has a  
21 pension plan for its pilots, which is the only  
22 unionized group on the property, correct?

23 A. Yes.

24 Q. And it went into bankruptcy and it  
25 ceased to contribute to that plan, correct?

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1 A. Again, I do not recall -- I did not  
2 keep up with the Delta situation.

3 Q. Well, when you wrote your Section  
4 1113 comparability study for Delta Airlines?

5 A. Yes.

6 Q. Did you inquire as to whether or not  
7 Delta had accrued pension liabilities?

8 A. I almost certainly would have, yes.

9 Q. You would have?

10 A. Yes.

11 Q. And did you do so?

12 A. I believe so.

13 Q. And did you -- what did you find  
14 out?

15 A. I don't recall offhand what we did  
16 in the Delta -- what that factoid was from the

17 Delta report.

18 Q. So you don't know, just from reading  
19 newspapers, being an economist or being a  
20 hired expert for Delta Airlines in their 1113  
21 proposal, you don't know whether Delta  
22 Airlines had accrued pension liabilities?

23 A. No, again, I have not followed the  
24 Delta situation so I prefer not to speculate.

25 Q. Were you following it when you

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1 prepared your Section 1113 proposal for them?

2 A. Certainly.

3 Q. Okay. At that time did you inquire  
4 as to whether or not Delta had accrued pension  
5 liabilities?

6 MR. BUTLER: Objection, form of the  
7 question.

8 THE COURT: Well, I think he  
9 answered it differently. You said yes, right?

10 THE WITNESS: Yes.

11 THE COURT: Overruled.

12 BY MR. DECHIARA:

13 Q. And did you find out that it did?

14 A. I believe so. As I said before that  
15 I don't recall that exact fact from the Delta  
16 report.

17 Q. Okay, when you say that exact fact.  
18 You believe that it did. As you sit here  
19 today on the witness stand, under oath, do you  
20 believe that Delta had, at the time you served  
21 as the expert and wrote your report, accrued

22 pension liabilities?

23 A. Under oath, if I had my report in  
24 front of me and I had the facts in front of  
25 me, then I could refer to it.

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1 Q. Let me put the report in front of  
2 you. Mr. Wachter, I'm not going to ask you  
3 this for the fourth time, let me just ask you.  
4 In your report on behalf of Delta Airlines,  
5 you do an analysis in the context of your  
6 comparability study of the wages and benefits  
7 of the Delta pilots, correct?

8 A. Correct.

9 Q. You do not, however, in that study,  
10 take into account any legacy costs that Delta  
11 Airlines may have had, including any legacy  
12 costs in connection with accrued pension  
13 liabilities, correct?

14 A. I think that's a different question  
15 than you were asking me before.

16 Q. Right. Can you answer the question  
17 I just asked you?

18 A. Okay, could you restate that  
19 question?

20 MR. DECHIARA: Could I ask the  
21 reporter to please read it back?

22 THE REPORTER: "You do not however  
23 take into account any legacy costs that Delta  
24 Airlines may have had, including any legacy  
25 costs in connection with accrued pension

1 liabilities, correct?"

2 THE COURT: In your report for  
3 Delta.

4 THE WITNESS: I believe I did take  
5 them into account.

6 BY MR. DECHIARA:

7 Q. Can you show me where?

8 A. It can take a while before I -- .  
9 It's on page 35.

10 MR. DECHIARA: Your Honor, if I may  
11 suggest, it's a long document. Perhaps Dr.  
12 Wachter would like to -- I can continue with  
13 the rest of my cross and if Dr. Wachter is  
14 still on the witness stand tomorrow he can  
15 take the night to review it.

16 THE COURT: All right. It seems to  
17 me, maybe I'm wrong but it's dealt with in  
18 paragraph 77 and paragraph 21, but he may  
19 disagree with me.

20 THE WITNESS: Paragraph 77?

21 THE COURT: Yeah and paragraph 21,  
22 but I think your suggestion's an excellent  
23 one.

24 MR. DECHIARA: Okay. And Monday,  
25 just to cut this short. Just to shorten this

1 line of inquiry, I would have the same  
2 question for Dr. Wachter regarding his report

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3 in the United Airlines case and in the Tower  
4 case. Let me give him now, his report in the  
5 United Airlines case.

6 BY MR. DECHIARA:

7 Q. Mr Wachter there's no question in  
8 your mind, is there, that United Airlines had  
9 massive pension liabilities?

10 A. Yes.

11 Q. Okay. So my question to you and, if  
12 you can't answer it now please feel free to  
13 study your report overnight. My question is,  
14 did you anywhere in your report in United  
15 Airlines in analyzing the paying benefits of  
16 the United Airlines unionized employees for  
17 purposes of your comparability study take into  
18 account legacy costs? And, in particular,  
19 accrued pension liabilities? And I would ask  
20 you the same question for Tower Airlines, I  
21 mean Tower Automotive.

22 A. Unless I'm misunderstanding your  
23 question, I believe we would have in each  
24 case.

25 Q. Well I want you to show me. That's

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1 the question.

2 THE COURT: He wants you to look at  
3 it overnight and tell him tomorrow.

4 THE WITNESS: Okay.

5 BY MR. DECHIARA:

6 Q. Because I've read it, and I don't  
7 see it. So if you could please -- I'm asking

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8 you to be able to show the Court where, in  
9 those reports, you point to legacy costs as  
10 something that should be factored into current  
11 workers pay and benefits. Now in your report  
12 you did not just rely on Department of Labor  
13 or BLS data but you also looked at data that  
14 was provided to you by Delphi, correct?

15 A. Yes.

16 Q. Okay. Let me refer you to page 22  
17 of your report.

18 A. Excuse me, which report is this?

19 Q. Your declaration in this case. It's  
20 Exhibit 16. And in particular I referring you  
21 table 5.3, do you see that?

22 A. What page are we on again?

23 Q. Twenty-two.

24 A. Yes.

25 Q. Okay. And there you have certain

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1 dollar figures for the compensation of  
2 Delphi's competitors in the motor vehicle  
3 industry, correct?

4 A. Correct.

5 Q. And you're just looking at  
6 production workers here, correct?

7 A. Correct.

8 Q. And you have three figures for the  
9 competitors' compensation. It's the customer  
10 data, the business team data and the car non-  
11 union plants, do you see those three lines?

12 A. Correct.

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13 Q. To what extent do any of those  
14 include legacy costs?

15 A. They would if they were there.

16 Q. How do you know that?

17 A. I believe that was part of the data  
18 collection.

19 Q. Who told you that?

20 A. I don't recall. It could have been  
21 Mr. Butler, it could have been someone else  
22 who I talked to --

23 Q. Did you ask that question?

24 A. Excuse me?

25 Q. Did you ask that question?

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1 A. Yes.

2 Q. And what were you told?

3 A. I was told that the CAR study which  
4 is a non-union plant would not have certainly  
5 legacy costs because non-union plants don't  
6 have legacy costs. That most of the customer  
7 data are the low-cost competitors. And most  
8 of them, as I understand it, don't have legacy  
9 costs. The business team data to the extent  
10 that it included firms like Viscion, I think  
11 it would include their legacy costs.

12 Q. Do you know that for a fact, or are  
13 you just speculating?

14 A. Well I thought I knew it for a fact  
15 until you raised the question.

16 Q. And now what do you think?

17 A. I believe, I believe that where

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18 legacy costs are there and were known and  
19 could be estimated, they were included.

20 Q. What do you mean that the customer  
21 data reflects low-cost competitors? What do  
22 you mean by low-cost?

23 A. Where the customer data is collected  
24 is that -- actually I misspoke, I should have  
25 said high-cost competitors. The way the

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1 business cost data is collected, and this  
2 really is a magnificent data set, that you  
3 almost don't find anywhere else, is that the  
4 firms that are competing with Delphi would  
5 report information to GM and GM would then  
6 calculate a premium that they would pass on in  
7 pricing, or a discount that they would pass on  
8 to Delphi. If Delphi believed that the  
9 premium was inaccurate, then they would go  
10 back to GM and GM would then report the data  
11 they had available. So that the customer data  
12 by its very nature will include the high-cost  
13 firms, because those were the firms that  
14 Delphi would have said, we'd like to see the  
15 data. Because they didn't think they were  
16 getting enough of a price cut.

17 Q. Let me refer you to Mr. Butler's  
18 declaration where he provides an explanation  
19 of where this business team data comes from.

20 A. I'm sorry, I thought you were  
21 talking about customer data. Did I  
22 misunderstand?

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23 Q. Yes. I believe you did.

24 THE COURT: No, you asked him about  
25 customer data.

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1 MR. DECHIARA: Oh yes, yes, yes, I'm  
2 sorry.

3 BY MR. DECHIARA:

4 Q. Let me refer you to Mr. Butler's  
5 declaration. Do you have that in front of  
6 you, Exhibit 7? Okay, all right. I apologize  
7 for any confusion. Now I'm referring to the  
8 business team data and I'd like to refer you  
9 to paragraph 84. Let me know when you're  
10 there.

11 A. Yes.

12 Q. Okay. Now Mr. Butler describes in  
13 his paragraph where the business team data  
14 came from, and I'm going to read the second  
15 sentence of paragraph 84 he says, quote,  
16 Delphi asked each division to identify its  
17 principle competitors and to determine or make  
18 their best estimate of the all in labor rates  
19 of these competitors, end quote. So in part,  
20 this business team data is based on estimates,  
21 correct?

22 A. Of course.

23 Q. Okay. And there is a figure that is  
24 derived, the one you have on your table of  
25 21.60. Do you know how that number was

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1 derived or calculated?

2 A. Yes.

3 Q. How was it derived?

4 A. It was derived from having the  
5 various people who were involved at Delphi  
6 with individual products and individual plants  
7 identify who they thought their competitors  
8 were. The idea for this was to try to get an  
9 accurate estimate of what they were facing in  
10 terms of competition. The idea being that  
11 they would look at the information and then  
12 they would, in part, ask themselves, can we  
13 meet this number?

14 Q. Did you do any independent  
15 investigation of the accuracy of these  
16 numbers?

17 A. The accuracy of these numbers, no, I  
18 did not.

19 Q. You just accepted the numbers the  
20 company gave you, and put them in your chart?

21 A. Yes, I did.

22 Q. Okay. And you have a description in  
23 your --

24 A. I did after that obviously with the  
25 analysis I put in it. I did look at the -- I

1 did talk with them at some length about the  
2 information.

3 Q. And then you accepted their numbers?

4 A. And then I, numbers look reasonable

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5 and, moreover, they fit, almost to the tee,  
6 the estimate that we separately got from the  
7 BLS data of the -- of what the Delphi faces  
8 with respect to its competitors --

9 Q. It matches, your saying -- go ahead,  
10 I'm sorry.

11 A. What it captures, what it captures  
12 is the competitive market price of production  
13 workers in the U.S. economy. And that number  
14 on all end compensation is around \$21.

15 Q. So the number that Delphi said was  
16 the average all-in compensation for its  
17 competitors matches the total compensation  
18 that you found with the BLS data throughout  
19 the private sector economy, correct?

20 A. Yes, in terms of the way we  
21 correctly did the comparability study.

22 Q. Right. But we know from the BLS  
23 data that hourly earnings in the motor vehicle  
24 industry are about a third higher than the  
25 private sector, do we not?

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1 A. As a factoid we do, but it's  
2 irrelevant to comparability, as so many of  
3 your other questions have been.

4 Q. But the chart in Dr. Voos'  
5 declaration shows that hourly earnings in the  
6 motor vehicle industry are about a third  
7 higher than the private sector. And that data  
8 is authoritative and reliable, to use your  
9 words, correct?

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10 A. If you -- she is calculating means

11 from --

12 Q. Please answer my questions. We're  
13 not -- this is not an academic seminar. I ask  
14 the questions, I'd ask you to answer them.

15 THE COURT: We, you know, the chart  
16 speaks for itself about hourly earnings.

17 There's a dollar difference.

18 MR. DECHIARA: I'll move on, Your  
19 Honor.

20 THE COURT: It's a dollar  
21 difference. Which means a lot to some people,  
22 I appreciate it.

23 BY MR. DECHIARA:

24 Q. Now the CAR study, that last figure,  
25 the lowest figure, do you know how CAR, the

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1 Center for Automotive Research did their  
2 study?

3 A. Exactly how they did their study, I  
4 don't know. I think they, as I understand it,  
5 what they did was they surveyed a number of  
6 unionized firms and non-unionized firms. CAR  
7 is a very respected center in terms of doing  
8 automobile research and they reported their  
9 findings.

10 Q. But do you know whether it was a  
11 comprehensive study, whether they look at  
12 every firm, did they only look at some firms,  
13 do you know the answer to that?

14 A. In detail I don't.

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15 Q. I'm not asking you in detail or not,  
16 I'm asking you do you know whether it's 100  
17 percent of the firms or less than 100 percent?

18 A. I would assume it was not 100  
19 percent of the firms, but it's an  
20 authoritative study.

21 Q. That's not my question. So you  
22 don't know whether it was a hundred percent or  
23 less than a hundred percent, correct?

24 A. I would very much doubt that they  
25 were able to contact a hundred percent of the

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1 firms in the U.S. economy that are in this  
2 industry.

3 Q. Well, is this the U.S. economy or is  
4 this the CAR study just of the motor parts  
5 industry?

6 A. I understood this to be the United  
7 States.

8 Q. So your understanding of this last  
9 number, the CAR non-union plants, that's for  
10 firms not just in the automotive industry but  
11 throughout the United States?

12 A. Excuse me?

13 THE COURT: Does this limit it just  
14 to automotive companies or does it cover other  
15 companies besides.

16 THE WITNESS: No, it's just  
17 automotive, parts.

18 THE COURT: But it's limited to  
19 those companies in the U.S.?

20 THE WITNESS: Yes.

21 MR. DECHIARA: Oh okay yeah.

22 Domestic automotive

23 BY MR. DECHIARA:

24 Q. But it is limited to automotive,

25 correct?

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1 A. And your testimony is you believe  
2 it's less than all.

3 MR. BUTLER: Objection, asked and  
4 answered for the third time.

5 THE COURT: Sustained.

6 BY MR. DECHIARA:

7 Q. Do you know which ones were -- how  
8 CAR chose the ones they chose?

9 A. Like, I don't have a recall on it  
10 now, I did read the report.

11 Q. In fact, the CAR study shows that if  
12 you looked at unionized plants, the number  
13 would be much higher, correct?

14 A. Of course. As I've said they looked  
15 at unionized plants and non-unionized plants.

16 Q. And if you looked at -- according to  
17 the CAR study if you just looked at, well  
18 according to Mr. Butler's declaration based on  
19 the CAR study, if you just looked at unionized  
20 plants the number would be 26.78?

21 A. Yeah but, why would you want to?

22 Q. That's not my question.

23 THE COURT: It's a good answer  
24 though. I'm ready to move on.

25

MR. DECHIARA: Okay.

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1 THE COURT: It's not the purpose to  
2 suit his report.

3 BY MR. DECHIARA:

4 Q. Do you know whether either the  
5 customer data or the business team data  
6 included firms who competed or who compete  
7 with Delphi in product lines from which Delphi  
8 plans to divest?

9 A. I would think so.

10 Q. And do you know whether the business  
11 team data and the customer data are weighted  
12 averages based on the extent to which the  
13 competitors compete with Delphi?

14 A. I did know at one point. I don't  
15 recall offhand. I just don't recall.

16 Q. That would be a relevant fact, would  
17 it not?

18 A. Might be, might not be.

19 Q. Okay. You have a discussion of  
20 quit-rates in your declaration.

21 A. Yes.

22 Q. Do you know what the quit-rates are  
23 for Delphi's competitors?

24 A. No, I don't.

25 MR. DECHIARA: No further questions.

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1 THE COURT: Okay.

2 MR. DECHIARA: Your Honor, I would  
3 just ask that the Witness provide an answer to  
4 those outstanding questions when we come back  
5 on Friday.

6 THE COURT: You know, to look at the  
7 three reports for the other studies you did.

8 THE WITNESS: Yes.

9 THE COURT: Okay. All right, I  
10 think this is a good place to take a break.  
11 And we'll resume on Friday at 10:00.

12 (Whereupon this proceeding was  
13 concluded.)

14 (Time noted: 6:11 P.M.)

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2 I N D E X

3 T E S T I M O N Y

4 WITNESS EXAMINATION BY PAGE

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20	and the unions		

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2 C E R T I F I C A T I O N

3

4 I, Lisa Bar-Leib, hereby certify that the  
5 foregoing is a true and correct transcription,  
6 to the best of my ability, of the sound  
7 recorded proceedings submitted for  
8 transcription in the matter of the bankruptcy  
9 of:  
10 DELPHI CORPORATION, et al.

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11

12 I further certify that I am not employed  
13 by nor related to any party to this action.

14

15 In witness whereof, I hereby sign this  
16 date:

17 May 12, 2006.

18

19 \_\_\_\_\_

20 Lisa Bar-Leib

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